S. HRG. 100-227

INDIAN FINANCING ACT AND BUY-INDIAN ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

OVERSIGHT HEARING ON INDIAN FINANCING ACT AND BUY-INDIAN ACT

APRIL 29, 1987
WASHINGTON, DC

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INDIAN FINANCING ACT AND BUY-INDIAN ACT

WEDNESDAY, APRIL 29, 1987

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m., in room 485, Russell Senate Office Building, Hon. Tom Daschle (acting chairman of the committee) presiding.

Present: Senators Inouye, Daschle, and McCain.

Senator DASCHLE. The committee will be in order. Chairman Inouye will be delayed and asked if I would begin the hearing. I anticipate that he and a number of other committee members will be here shortly, but in their absence I intend to begin deliberations this afternoon, and I've been asked to read the chairman's opening statement.

So, recognizing that as much as I'd like to claim it for my own, I will give credit where credit is due, to Senator Inouye and to his staff for holding this hearing this afternoon.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

Today we will consider recommendations for strengthening the Indian Financing Act and the Indian preference provisions of the Indian Self-Determination Act.

This is the second of three economic development hearings that the committee is holding this month. The final hearing tomorrow morning will address S. 721, the Indian Development Finance Corporation Act.

The first issues we will examine are amendments to the Indian Financing Act. The purpose is to allow guaranteed loans to be sold or assigned to any person, and to increase the ceiling of loan guarantee authority to $500 million.

When Vice Chairman Evans and I sat down to discuss the legislative agenda for Indian Affairs Committee for the 100th Congress, Indian preference in government contracting was one of the issues that we both wanted to examine. Government procurement activities offer very substantial business opportunities. Unfortunately, the number of Indian enterprises participating in government procurement contracting is very disappointing.

Committee staff has distributed amendments proposed by the tribal employment rights office that we believe will strengthen the existing Indian preference laws. We believe these amendments will benefit Indian communities substantially by creating jobs and ultimately increasing per capita income.

Some of the recommendations that are proposed include an amendment to require the BIA, when building facilities, to use Indian contractors. In addition, the amendment would make it clear that Buy-Indian contracts apply to all direct contracts which are for the benefit of Indians.

The amendments also address the question of the percentage of Indian ownership that would be required to be eligible for Buy-Indian, and who would certify ownership and control.

We are optimistic about the potential of these amendments and we look forward to hearing the views of those who will testify this afternoon. We are especially interested in hearing from representatives of the administration and look forward to discussing these proposals with them.

Senator DASCHLE. Our first witness this afternoon is Mr. Ross Swimmer, Assistant Secretary of Interior of the Bureau of Indian Affairs, accompanied by Mr. Wilfredo Gonzales, the Associate Administrator for the Minority Small Business and Capital Ownership Development of the Small Business Administration. I'd ask those two gentlemen to come to the table, and welcome both of them at this time.

Knowing that I do speak for the chairman and the vice chairman, we are delighted you could share some time with us this afternoon. We invite your testimony in any way that you see fit, and we're encouraged we could talk about these from a mutually advantageous point of view this afternoon.

So, Mr. Swimmer, please proceed and we'll take your testimony at this time.

STATEMENT OF HON. ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, WASHINGTON, DC

Mr. SWIMMER. Thank you, Mr. Chairman. It is a pleasure for me to be here today. I do have a written statement, which I would like to have included in the record.

Senator DASCHLE. Your prepared statement will be inserted in the record immediately following your oral presentation.

Mr. SWIMMER. I will paraphrase from that written statement, and then be pleased to answer questions.

As you may know, I served on the recent President's Commission on Indian Reservation Economies, which was a study in determining the obstacles and, hopefully, some solutions to Indian economic development. As a result of that, I personally have some feelings about this issue. Speaking on behalf of the Administration, I think that there are some things that we can do to strengthen the Indian Finance Program, and improve the quality of life on reservations through bringing jobs to the reservations.

I think the amendments that were proposed, make a lot of sense particularly the one involving the sale of the guaranteed portion of a loan that would be made by the Bureau. To include a variety of investors in addition to financial institutions this will have the effect of opening up secondary markets for Bureau of Indian Affairs guaranteed loans, similar to the way it is done in other areas of the Government.

The issue of raising the limit on the guaranteed loan program from $200 million to $500 million, we believe, needs to have some more discussion to determine whether the amount is proper or not. We have been in the business now for several years and we are approaching the limit of $200 million, but we have not bumped it.

I will say, however, that one of the goals of my administration within the Bureau of Indian Affairs has been to increase the economic development activity in Indian Country, and there is certainly a possibility that we could meet this $200 million cap. So I would hope that the committee will work with us and review the limit and determine if there is going to be substantially increased activity to what extent we may need to raise that limit.

There are some other things that we believe the committee may explore in the Indian Financing Act, and we would be pleased to work with the committee on these various issues.

One is the sale of the direct loans that the Bureau of Indian Affairs makes. Under the Indian Financing Act there are basically three ways of making a loan: one is a guaranteed loan where we actually guarantee part of the debt of a lender that makes a loan to an Indian individual or to a tribe; another is what we call the U.S. Direct Loan Program where we are actually acting as a lender, we loan 100 percent of the money to the borrower; and the third is the concept of the Economic Development Grant Program.

In the Direct Loan Program we now maintain a portfolio of the direct loans, and there is a chance that through authorizing the sale of the direct loan—which would be backed, of course, with the full faith and credit of the Federal Government—it may return money to the treasury.

The committee may also choose to look at authorizing the payment of guaranteed loan default claims in advance of appropriations. While it is a procedural thing, again, it could enhance the credit quality of the guarantee that goes to banks and lending institutions.

The concepts under the Small Business Act of allowing grants that are made under the Economic Development Grant to be considered private paid-in capital and paid-in surplus for balance sheet purposes is another area of review that we think would enhance the business opportunities.

There is, under the guarantee, some limits on the kinds of debt that can be guaranteed. Another area that the committee may want to examine is the concept of performance bonds being guaranteed, or bonds issued under the Indian Tax Status Act, which are really in the nature of loans, but they are generally sold to the public.

We have also raised the issue of the on or near a reservation. I think that pretty well speaks for itself. The grant program is limited to on or near a reservation. We do have instances where there could be a different interpretation. If a business is adjacent to the reservation but because of politics, or one reason or another, it cannot get onto the reservation or lease land from the tribal government, jobs could be created that would be adjacent to the reservation.

Under the procurement issues from the Federal Government, we do believe, and mention this in the commissions' report, that the Federal marketplace has many opportunities to meaningfully reduce poverty among Indian people by providing a market for products to be made with Indian labor, and thereby, of course, creating the jobs on the reservation.

We identified in our report certain obstacles: Government contracting and procurement policies, regulations and procedures—all being obstacles that we faced during hearings and reviewing the literature of tribes dealing with the Federal Government.

We also have faced the obstacles of determining what an Indian tribe is or should be, and I think—and my colleague here may be able to address that some—that there have been some different interpretations about whether an enterprise owned by an Indian tribe qualifies as a minority contractor, and some of those things may be cleared up through amendments as the committee would see.

We have seen a dramatic increase of contracting with Indian firms, and I think that speaks very well for the efforts of the Department of Defense and Small Business Administration, and I hope for our program. If I had some concern it would be in the area of determining the kinds of Indian enterprises and the certifications that go along with individual Indian enterprises doing the defense work.

I have been advised in some cases there is more of a self-identification issue. I know that we regularly have folks giving us calls because they would like to be certified as a minority, and they know they're part Indian but they simply can't prove it, and so, "Gee, if you could just send us a letter, then that would be taken care of." We look at that as a pretty restrictive situation that should remain: that Indian contractors, Indian firms and tribes need not only be recognized, but need to have their degrees of Indian blood, be able to certify by tribal organization they are members of that tribe and, of course, have the requisite ownership.

Other obstacles that we had identified include: the exclusion, at least at one time, as a policy of Indian tribes as eligible entities; exclusion of some tribal enterprises that were not chartered under State laws; inconsistency of Federal procurement regulations; cumbersome bidding procedures; technical assistance; and poor loan supervising.

We think that we can explore, both internally within the department and with the committee, some possibility of amendments to the Indian Self Determination and Economic Assistant Act to expand the Buy-Indian, or Section 7(b) Public Law 93-638, which could possibly include other agencies. Within the Department of Interior, the Bureau of Indian Affairs has a fairly strict Buy-Indian policy, and within the Department it is discretionary, and outside of the Department then it is really pretty much non-existent except in cases where Department of Defense has made a stated policy initiative of trying to do business with Indian folks. We think there could be some strengthening of the 7(b) legislation.

One issue that we think should be clarified, is the court decision in *Andrus* v. *Glover,* which had the effect, anyway, of doing away

with Buy-Indian preference dealing with facilities construction, particularly as it relates to highway construction.

We will be consulting with the Small Business Administration, the Department of Justice, and others, to determine how the existing 8(a) program can be strengthened with respect to Indian enterprises and tribes.

With that I would conclude my comments and be pleased to answer any questions the Chair might have.

[Prepared statement of Mr. Swimmer appears in the appendix.]

Senator DASCHLE. Thank you, Mr. Swimmer. I think we'll proceed with the testimony of Mr. Gonzales prior to the time we ask any questions, but I might ask the chairman if he has any—I have already read his formal statement into the record—but if he has any additional comments. We will then call on Mr. Gonzales for his testimony.

STATEMENT OF WILFREDO GONZALES, ASSOCIATE ADMINISTRATOR, MINORITY SMALL BUSINESS & CAPITAL OWNERSHIP DEVELOPMENT, SMALL BUSINESS ADMINISTRATION, WASHINGTON, DC

Mr. GONZALES. Thank you very much, Mr. Chairman. I am pleased to have this opportunity today to offer comments on Chapter 7 of the "Report of the Task Force on Indian Economic Development," and the proposed extension of the Buy-Indian Act through amendment of the Indian Self-Determination and Assistance Act, Public Law 93-638.

In the interest of time I would like to submit my statement for the record and only read a segment at this time.

Mr. DASCHLE. Your prepared statement will be inserted in the record immediately following your oral presentation.

Mr. GONZALES. Thank you. I am available for questions the committee may have after my comments.

The SBA supports any effort by the Federal Government aimed at promoting the economic well-being of socially and economically disadvantaged individuals in general and Native Americans in particular.

As a matter of fact, in the case of the latter our Agency has been active in addressing the needs of the Native American community. We have, for example, entered into a Memorandum of Understanding with the Department of Defense which sets forth the efforts by the two parties in the promotion of the free enterprises system for the benefit of individual tribal members and tribally-owned businesses. DOD has agreed to designate certain defense contracts for 8(a) contracts. Our rules and regulations allow small business concerns owned by tribes, as well as Alaskan Native Regional Corporations, to participant in the program.

Although we are generally supportive of any efforts, we do offer the following observations: with regard to amendments C and D to section 7 of the Indian Self-Determination, we understand the unique government-to-government relationship between the United States and Indian tribal governments and, therefore, we accept the need for a special status for Indian tribes. However, we also need

to work closely with other Federal agencies to determine the appropriate extent of this relationship.

I would also like to point out that on page 8 of this report the writer erroneously states that SBA prohibits minority firms from joint venturing with other companies. SBA does, in fact, allow for joint venturing. Chapter 4 of our SOP 80-05 spells out, in detail, criteria governing such ventures. This criteria allows for 8(a) concerns to enter into joint venture agreements with another 8(a) concern or with a small disadvantage concern when the joint venture agreement meets certain provisions. Again, as I indicated, in the interest of time I will not read those provisions at this time.

Our comments concerning the 8(a) Task Force Report refer to section 8(b) and (e) of the report, which is page 15 and 18. As far as section 8(b) is concerned, we recognize the strict criteria our 8(a) program has in place. It appears onerous, but SBA intends to maintain them as they are. Having experienced the abuses we have had in the past, we intend to enforce all safeguards to ensure the gains the firms in our portfolio have achieved.

The Task Force Report recommends in section 8(e)5 that SBA regulations be amended to afford native American owned firms a longer fixed program participation term than that established for other socially and economically disadvantaged firms. We do not agree with this recommendation. Again, we feel this action will involve us in the task of weighing the disadvantage status of one group versus another, an exercise we believe to be counter- productive.

A report in section 8(e)6 recommends that an Indian desk be established in SBA. We would be willing to consider this action.

These are essentially our comments. We are certainly interested in the outcome of these proposals, and would be more than glad to cooperate with BIA in their efforts, too.

Mr. Chairman, this concludes my prepared statement. I will take any questions.

[Prepared statement of Mr. Gonzales appears in the appendix.]

Senator DASCHLE. Thank you, Mr. Gonzales and Mr. Swimmer. We appreciate the testimony from both of you.

Mr. Gonzales, could you give the committee a figure with regard to what amount of money has been contracted out in the most recent fiscal year to Indian businesses pursuant to the memorandum of understanding that you have with the Department of Defense? How many dollars have actually been provided to Indian businesses since the memorandum of understanding was signed?

Mr. GONZALES. In fiscal year 1987, as of April 1987, with DOD we have let 90 contracts, to the tune of $62,532,733.

Senator DASCHLE. $262 million?

Mr. GONZALES. $62 million.

Senator DASCHLE. All right. That's since the memorandum of understanding was signed, or——

Mr. GONZALES. No, sir.

Senator DASCHLE. That was just in the last fiscal year?

Mr. GONZALES. Yes; this is just for the fiscal year. In fiscal year 1983, which was when the memorandum was signed, we had 133 American Indian firms identified. We also make a breakdown, a distinction, between American Indian, Eskimo, and Aluet. We had

133 American Indian firms. We promised to establish 75 new native American businesses. As of fiscal year 1987—as of February 1987—we have 209, which gives us an increase of 76, so we feel that we have met——

Senator DASCHLE. Let's see, that's 209 businesses. Do you have the data there for each of the fiscal years since 1983?

Mr. GONZALES. Yes, sir; I do.

Senator DASCHLE. Could you just provide those?

Mr. GONZALES. For American Indians in fiscal year 1983 was—let me just round them off——

Senator DASCHLE. Right.

Mr. GONZALES. $164.5 million in 1983.

Senator DASCHLE. OK. In 1984?

Mr. GONZALES. 319 contracts were——

Senator DASCHLE. 319 contracts.

Mr. GONZALES. In fiscal year 1984 there were 382 contracts for $235 million. In fiscal year 1985 we had 354 contracts for $187 million. In fiscal year 1986 we had 338 contracts for $262 million. Since October 1, 1986 through April of this year we have the $62 million at 90 contracts.

Senator DASCHLE. I see. OK.

Mr. GONZALES. Generally let me just say that DOD's experience is that it is usually in the last quarter that many of the contracts are culminated.

Senator DASCHLE. Why is that?

Mr. GONZALES. It's based on their projections. They have a good feel for what they need at that particular time, and it has given enough of the firms sufficient time to respond to some of the RFP's that are out on the street.

Senator DASCHLE. Is there any legitimacy to the real skeptical question—and you would have to forgive the skeptic—in saying that "You've got the last quarter, you've got money left over, let's fulfill some of these obligations that we didn't know we had money for in the first three quarters"? Could a skeptic be justified in offering that query?

Mr. GONZALES. It think I'd rather deal with the skeptic statements that the wheels of a bureaucracy turn slowly.

Senator DASCHLE. Well, I don't really need a categorical statement, but is any of of that a factor. I mean, the fact that you've got money left, and given the fact that money is there, that you'll utilize some of it for contractual obligations under this memorandum of understanding?

Mr. GONZALES. I would hate to speak on behalf of the Department of Defense and say—procurement is not my field. I really would be——

Senator DASCHLE. Plead the Fifth.

Mr. GONZALES. At a disadvantage. Yes.

Senator DASCHLE. Well, let me ask you this. You may have it with you, but if you don't have it with you could you give the committee the list of Indian 8(a) contractors which you've certified.

Mr. GONZALES. Yes; we can provide that list. I do not have it with me.

Senator DASCHLE. You don't have it with you at this time. What percentage of the DOD contract dollars are represented by Indian business 8(a) contracts? Do you have that?

Mr. GONZALES. No; I don't have that with me either, sir. I can provide that.

Senator DASCHLE. Would you provide that for the record as well?

Mr. GONZALES. Sure.

[Information to be supplied follows:]

SEC. 8A CONTRACTS—AMERICAN INDIANS

Procuring agency	Number of contracts	Net amount
USDA	363	$29,240,182.08
Army	663	856,419,000.46
USAF	506	224,290,307.56
ERDA	9	483,314.00
Commerce	20	1,625,545.01
CFTC	1	350,000.00
DOD	9	2,398,662.29
DED	3	400,424.00
DOE	77	23,845,206.66
DLA	50	54,356,771.86
DMA	1	23,541.65
FCC	1	61,815.00
EPA	10	1,323,992.20
FEMA	4	949,973.00
GSA	147	20,931,159.51
HHS	81	13,235,608.04
HUD	8	1,325,154.27
Interior	449	107,659,087.72
Justice	1	160,000.00
Labor	8	1,449,925.00
NASA	32	10,309,345.66
NWS	8	498,372.45
Navy	215	80,678,221.74
NRC	3	568,135.00
OEO	1	620,760.00
USPS	3	1,273,613.00
RLA	2	66,705.00
SBA	8	738,408.00
SEC	1	526,000.00
State	2	101,142.00
DOT	398	70,964,449.77
Treasury	3	121,665.96
VA	413	47,026,591.73
Total	3,500	1,554,022,450.62

ACTIVE 8(A) COMPANIES—AMERICAN INDIANS

Company name, address, city, state, and ZIP	Chief executive officer, telephone	SIC	Product/service	Entry date
NW Building Maintenance Carpet Sales, Inc., P.O. Box 1061, 412 West Third Ave., Moses Lake, WA 98837.	Henry L. Vernwald, 509-765-7725	7349	Janitorial services	Apr. 12, 1971.
Kalispel Metal Products, Inc., P.O. Box 267, Cusick, WA 99119	Larry Hanson, 509-445-1121	3499	Fabricated metal products	May 31, 1974.
Alaska Diversified Contractors, Inc., 314 East International Rd., Anchorage, AK 99502	Joseph P. Llands, 907-561-1295	1542	General contractor	Feb. 23, 1976.
Coyote Corp., Contractors & Engineers, P.O. Box 7250, Spokane, WA 99207	Ernie Krueger, 509-484-5604	1542	General construction	Aug. 8, 1978.
Warbonnet Electric, Inc., P.O. Box 114, Fort Hall, ID 83203	Norman Hayball, 208-237-5135	1731	Electric work contracting	Apr. 28, 1978.
Columbia Navigation, Inc., P.O. Box 636, Kettle Falls, WA 99141	Roy E. Weatherman, 509-684-4335	4499	Water transport services	Feb. 13, 1979.
Bartow Consultants—Architects, 275 Front Street South, Issaquah, WA 98027	Jeffery S. Bartow, 206-392-1616	8911	Architecture/engineering	Apr. 10, 1979.
PAC CON Corp., P.O. Box 2338, Redmond, WA 98073	John J. King, 206-885-5431	1799	Fence construction contractor	Sept. 19, 1979.
C&M Janitorial Services, Inc., P.O. Box 306, Mountain Home, ID 83647	Martha Atwood, 208-587-7097	7349	Janitorial services	Sept. 26, 1979.
White Buffalo Construction, Inc., 6653 Shaw Highway Southeast, Aumsville, OR 97325	Luther Clevenger, 503-749-1861	1629	Heavy construction	July 28, 1980.
Jerry Carter Co., Inc., P.O. Box 327, Carson, WA 98610	Jerry Carter, 509-427-8328	1629	....do	Do.
Dirt & Aggregate Interchange, Inc., 20905 NE. Sandy, Troutdale, OR 97060	Henry H. Pelfrey, 503-661-5093	1611	Street and highway construction	Apr. 22, 1961.
David E. Lopeman Co., SE. 201 Whiter Rd., Shelton, WA 98584	David E. Lopeman, 206-426-5984	851	Forestry services	July 7, 1981.
Demontigny Engineers, Inc., P.O. Box 906, Kent, WA 98032	Charles D. Demontigny, 206-941-2139	8911	Engineering and architectural	Sept. 24, 1982.
Robert G. Earle Construction, Inc., 436 SW. Riverbend Dr., West Linn, OR 97068	Robert G. Earle, 503-650-0000	1541	General contractor, industrial building	Oct. 1, 1982.
Hammonds Construction, Inc., 1404 Brownsboro Highway, Eagle Point, OR 97524	David Hammonds, 503-826-2777	1542	General construction, nonresidential	Jan. 28, 1983.
JCE Construction, 216 West 14th, Post Falls, ID 83854	James C. Ellenwood, 208-773-7450	8911	Engineering, architecture, and surveying	July 12, 1983.
All American Contractors, Inc., P.O. Box 1099, Blackfoot, ID 83221	Allen Lee Kniffin, 208-785-6001	1629	Heavy construction	July 29, 1983.
Warm Springs Crushing & Construction Co., P.O. Box 769, Warm Springs, OR 97761	Ted Brunoe, 503-553-1596	1429	Crushed rock—NEC	Oct. 28, 1983.
Gary's Disposal, Inc., P.O. Box 8, Neah Bay, WA 98357	Gary Ward, 206-645-2501	4212	Garbage collection and transport	June 3, 1984.
Forrest H. Jackson, Inc., E. 1817 Leona Dr., Mead, WA 99021	Forrest H. Jackson, 509-466-0215	1629	General contractors—heavy	June 12, 1984.
Hood River Plumbing & Heating, Inc., 1016 11th St., Hood River, OR 97031	Richard D. Lucas, 503-386-2180	1711	Plumbing, heating, and air-conditioning	Oct. 3, 1984.
J.F. Wallace Construction, 123 Foster Creek Rd., Toledo, WA 98591	James F. Wallace, 206-864-2621	1611	Highway and street	Jan. 16, 1985.
Les Killgores Excavating, HC01 Box 160, Whitebird, ID 83554	Lesly Robert Killgore, 208-839-2255	1629	General construction	May 9, 1985.
Stierwalt Corp., 2106 E. Broadway, Spokane, WA 99202	Jay S. Stierwalt, 509-534-9356	1721	Paper hanging, decorating	May 24, 1985.
TPT Services, Inc., 250 SW. Tualatin Loop, West Linn, OR 97068	Terry L. Pond, 544-48-1220; 503-638-9138.	1611	Street construction	Jan. 15, 1986.
Arrowhead Sand, Inc., P.O. Box 184, Roberts, ID 83444	Clara R. Anderson, 208-228-6292	1611	Highway and street construction	Jan. 20, 1986.
John Richmond, Contractor, P.O. Box 91, Bly, OR 97622	John Richmond, 503-353-2540	1629	Heavy construction	Jan. 15, 1986.
Anderson Associates, Architects Planners, 1100 Jadwin Ave., Richland, WA 99352	John D. Anderson, 509-946-6141	8712	Architectural services	Apr. 30, 1986.
Roof Systems, Inc., 2836 NE. 89th, Portland, OR 97220	Everett Ortiz, 503-252-8445	1761	Roof and sheet metal	May 06, 1986.
Martin Construction, 9361 N. Douglas Highway, Juneau, AK 99801	Lyle T. Martin, 907-586-1884	1542	General construction	Apr. 14, 1986.
Crazy Rock Co., P.O. Box 72, Nespelem, WA 99155	Bernard Picard, 509-633-2416	1541	....do	May 27, 1986.
EDT Constructoin, Inc., 7409 NE., Hazel Dell Ave., Vancouver, WA 98665	Edward D. Thompson, Sr., 206-694-2515	1611	Highway and street construction	June 17, 1986.

ACTIVE 8(A) COMPANIES—AMERICAN INDIANS—Continued

Company name, address, city, state, and ZIP	Chief executive officer, telephone	SIC	Product/service	Entry date
Argus Systems, Inc., South 414 Pines Rd., Spokane, WA 99206	Claude L. Cox, president, 509-927-9448	7832	Guard service	Apr. 13, 1987.
MCP, Inc., P.O. Box 1700, Pendleton, OR 97601	Clifford C. Picared, 503-276-9753	3672	Manufacture printed circuit board	Apr. 15, 1987.
Old Indian Applicators, CO., Indian Island, P.O. Box 46, Old Town, ME 04468	Miles E. Francis, 207-827-5140	1541	General construction	Sept. 28, 1978.
H.J. Sockbseon, Inc., 1410 Essex St., Bangor ME 04401	Henry J. Sockbseon, Jr., 207-947-163	1541	Contracting general	Mar. 22, 1979.
Penobscot Construction Co., P.O. Box 238, Old Town, ME 04468	Wayne A. Loring, 207-827-8307	1742	Drywall construction	June 30, 1986.
Amtech Corp., 294 Valley Rd., P.O. Box 4303, Middletown, RI 02840	Sloan B. Jones, 401-849-0551	9811	Engineering services	Feb. 18, 1987.
Moses Fence Co., Inc., 10478 Ridge Rd., Medina, NY 14103	Lucille Moses, 716-735-3116	3496	Fence Manufacturing	Jan. 13, 1984.
L & H Development Corp., 221 State St., Watertown, NY 13601	Donald L. Maracle, 315-782-8709	1542	General construction	Nov. 13, 1984.
Daniel McConnell Masonry, Inc., 401 Wyoming Street, Syracuse, NY 13204	Daniel N. McConnell, 315-475-8481	1711	Concrete work	Jan. 31, 1986.
Clause Paving, 5380 Chew Rd., Sanborn, NY 14132	Darrell H. Clause, Sr., 716-297-2207	1611	Paving	Feb. 19, 1986.
Lo-Jay Construction, 5623 Bridgeman Rd., Sanborn, NY 14132	Lois M. Jircitano, 716-731-9396	1542	General construction—roofing steel erection	Sept. 8, 1986.
Safe International Inc., 383 North Kings Highway, Cherry Hill, NJ 08002	Dalim K. Majumdar, 609-291-1221	8911	Engineering services	Mar. 11, 1985.
Native American Consultants, Inc., 725 2d St. NE., Washington, DC 22202	Louts R. Bruce, 202-547-0576	7392	Management consulting	May 26, 1976.
Aqua Tankers, Inc., 1706 Thames St., Baltimore, MD 21231	Russi Makogina, 301-732-8494	5551	Boat dealers/petroleum product	Feb. 17, 1984.
TCI, Inc. (The Clary Institute), 3410 Garfield St., NW., Washington, DC 20007	Thomas Clary, 202-333-6350	7392	Management consultant, personnel	June 16, 1977.
Support Services, 421 Butternut St., Washington, DC 20006	Walter John Hillabrant, 202-722-1070	8111	Litigation support services	Aug. 13, 1979.
ABA Corp., 2300 South 9th St., Arlington, VA 22204	Donna M. Choma, 703-486-0262	7372	Computer systems analysis	June 8, 1980.
Engineering and Economic Research, Inc., 1801 Alexander Bell Dr., Reston, VA 22901	Harpal Singh Dhillon, 703-264-7300	7391	Research and Developmental laboratory	Dec. 24, 1980.
Management Systems Application, Inc., 205 South Whiting St., Alexandria, VA 22304	Frances B. Havens, 703-823-9318	7372	Computer programming	Aug. 1, 1983.
Cexec, Inc., 2722 Merrilee Dr. suite 350, Fairfax, VA 22031	Douglas C. Rhodes, 703-573-9400	7372	Computer programming software	Feb. 24, 1984.
Simms Industries, Inc., 7413 Meadow View Circle, Clarksville, MD 21029	James R. Simms, 301-498-5927	7392	Systems engineering and R&D	June 3, 1984.
LSA, Inc., 6320 Augusta Dr., suite 1102, Springfield, VA 22150	Peggy D. Tech, 703-644-1200	8911	Engineering services	July 17, 1984.
Securiguard, Inc., 6842 Elm St., McLean, VA 22101	Patricia Del Marvil, 703-821-6777	7393	Protective services	Nov. 29, 1984.
Amerind Inc., 4700 King St., 420, Alexandria, VA 22302	Raymond E. Dennison, 703-671-7171	7392	Management consulting	Feb. 20, 1985.
KRW, Inc., 8996 Burke Lake Rd., No. 303, Burke, VA 22015	George A. Earnhart, 703-425-6667	7392	....do	May 17, 1985.
Radan Systems, Inc., 1400 Rockville Pike, No. 750 Rockville, MD 20852	Badri Radhakrishnan, 301-231-7820	7273	ADP systems analysis	Feb. 11, 1986.
Earl Industries, Inc., 826 Mount Vernon Ave., Portsmouth, VA 23707	James R. Earl, 804-397-1039	3732	Marine Repair, Craft, Fabricate	Mar. 13, 1986.
GEO-Technical, 851 South 19th St., Harrisburg, PA 17104	James Diaz, 717-236-3006	8911	Civil engineering, geological	Oct. 12, 1984.
Safe International, Inc., 1831 Chestnut St., Philadelphia, PA 19103	Dalin Majumdar, 215-557-7108	8911	Engineering services	Mar. 11, 1985.
Pembroke Machine Co., Inc., P.O. Drawer 1659, Pembroke NC 28372	Rabon Lowry, 919-521-3411	3599	Machine shop parts	Jan. 7, 1975.
Chavis Tool & Manufacturing Co., Inc., P.O. Box 746, Florence, SC 29501	Earl Chavis, 803-326-5650	3400	Metal products	June 8, 1977.
Pembroke Electric Co., East 3rd St. P.O. Box 998, Pembroke, NC 28372	Monroe F. Lowry, 919-521-2881	1731	Electrical contractor	June 26, 1979.
Blue Ridge Structure Co., P.O. Box 310, Skyland, NC 28726	Jerry Fagen, 704-684-8591	1622	Heavy construction	Aug. 4, 1982.
Hilton Systems, Inc., 920 Farmer St., Vicksburg, MS 39180	Clifton K. Hilton, president, 601-634-6164	8911	Engineering	June 7, 1983.
Native American Services Associates, Inc., P.O. Box 11367, Huntsville, AL 35814	Janice F. Robbins, president, 305-881-1586	8911	Data Processing and Software Service	Apr. 7, 1984.

Tsali Construction Co., P.O. Box 461, Cherokee, NC 28719	Robert A. Lambert, president, 704-497-5506	1629	General construction	June 12, 1984.
Cherokee Enterprises, Inc., P.O. Box 1317, Indialantic, FL 32903	Warren Lightfoot, president, 305-773-1777	1623	Underground utility contractor	Sept. 11, 1984.
E.R. Rogers Painting Co., Route No. 1, Box C-94, Red Springs, NC 28377	Elias R. Rogers, 919-875-4208	1721	Painting contractor	Sept. 25, 1984.
Planning Design & Building Development Co., Inc., 1210 14th St., Box 844, Meridian, MS 39302.	Earnest A. Tiger, owner, 601-483-8900	1542	General construction	Nov. 13, 1984.
Carolina Welding Construction & Maintenance, 905 North Water St., Lumberton, NC 28358	Allen J. Locklear, owner, 919-738-4354	7692	Metal fabrication, welding	Jan. 23, 1985.
K&L Co., 84 Towstring Rd., Cherokee, NC 28719	Hoover L. Lambert, proprietor, 704-497-9734.	851	Forestry services	Mar. 11, 1985.
Robeson Farm Services, Inc., P.O. Box 214, Pembroke, NC 28372	James L. Oxedine, president, 919-521-2318	711	Soil preparation services	July 18, 1985.
Smith Construction Co., Route No. 3, Box 280-B, Bryson City, NC 28713	John A. Smith, partner, 704-488-2888	1611	Grading & paving	Jan. 15, 1986.
Jerry Parker d/b/a Smoke Signal Communications, P.O. Box 1430, Cherokee, NC 28719	Jerry Parker, 704-497-4500	1623	Telephone line construction	Do.
Lanlor Office Supplies, 721 Monmouth St., Newport, KY 41071	Sandra L. Taylor, 606-292-0400	5081	Office supplies	Feb. 21, 1986.
Ooten Coal Co., P.O. Box 2886, Pikeville, KY 41501	Nancy Y. Caudill, President, 606-432-0364	5052	Coal dealer	Mar. 3, 1986.
Uwohali, Inc., 225-A Holmes Ave. NE., Huntsville, AL 35801	Wawah Diane Weston, President, 205-539-0959.	8911	Engineering and architectural	Jan. 15, 1987.
H&M Construction Inc., 432 Wabasha Ave., St. Paul, MN 55103	Morris Wilson, 612-228-0006	1542	General construction	Aug. 5, 1976.
Platt Construction Co., 3321 West Rawson Ave., Franklin, WI 53132	Richard A. Platt, 414-761-3868	1542	do	July 19, 1978.
Enginetics Corp., 7700 New Carlisle Pike, Huber Heights, OH 45424	R. Dale Pelfrey, 513-878-3800	3599	Manufacture, aerospace parts	Apr. 22, 1983.
T&R Riggin, Inc., 9950 Naples St., Blaine, MN 55434	Terrance Roy, Sr., 612-780-4044	1542	General contractor, nonresidential buildings	Sept. 16, 1983.
Fond du Lac Manufacturing, Inc., 10514 University Rd., Cloquet, MN 55720	Randy Hella, 218-879-6735	3449	Fabricated metal products, n.e.c.	Apr. 17, 1984.
Quality Concrete Co. of Marquette, Inc., 906 West Baraga Ave., P.O. Box 712, Marquette, MI 49855.	Clifford W. Premeau, 906-228-8851	1611	Concrete Construction	Apr. 12, 1984.
Minnesota Drillers, Highway 75 North, Madison, MN 56256	Walter Ervin, 612-598-3758	1542	General contractors, nonresidential buildings	Feb. 22, 1984.
Thunderbird Electronics, 925 Winnetka Ave. North, Golden Valley, MN 55427	Juanita Oker, 612-541-9294	3679	Electronic components	July 31, 1984.
Kinross Manufacturing Corp., Building 465 Industrial Sector, Kinchelde, MI 49788	Gerry Earl Blanchard, 202-822-9097	3482	Small arms ammunition	Aug. 9, 1984.
Nelson Tool Corp., 388 North County Rd., Sunbury, OH 43074	Michael Nelson, 614-965-1894	3544	Dies-tools-jigs-fixtures	Apr. 24, 1985.
Northern Natural Industries, Inc., Rural Route 2, Box 32, Hibbing, MN 55746	M. Duane King, 218-778-6853	3499	Fabricated metal products, n.e.c.	May 16, 1985.
Gordon Construction, Inc., Star Route, Box 159, Mahnomen, MN 56557	Harold R. Gordon, Jr., 218-935-2191	1542	General contractor, nonresidential buildings	May 24, 1985.
Eagle Contracting, Inc., P.O. Box 183, Remer, MN 56672	Terrence Hodder, 218-566-1454	1542	do	June 19, 1985.
Red Lake Builders, Inc., P.O. Box 250, Red Lake, MN 56671	Herb Riley, general manager, 218-679-3891	1542	General contractors, building	Sept. 3, 1985.
White Earth Garment Manufacturing Co., Inc., Star Route, Mahnomen, MN 56557	Bill Osborn, 218-935-2246	2399	Fabricated textile products	Oct. 4, 1985.
Luxon Plumbing Heating, Inc., 800 Livernois, Ferndale, MI 48220	Alice Madeline Luxon, 313-548-7373	1711	Plumbing and heating contractor	Sept. 8, 1986.
Veit Construction, Inc., 279 North Medina St. Loretto, MN 55357	Gae B. Veit, 612-479-1300	1541	General contractors, industrial and warehouse	Do.
Red Cliff Construction Corp., P.O. Box 529 (Highway No. 13), Bayfield, WI 54814	Leo Lafernier, 715-779-5805	1622	General construction	Do.
Ojibwa Forest Products, Inc., P.O. Box 37, Waubun, MN 56589	David Snetsinger, 218-473-2141	2421	Sawmills and planning mills, general	Mar. 4, 1987.
Red Wing Products, Inc., P.O. Box 68, Kellyville, OK 74039	Katie Jones, 918-247-6162	3728	Electrical harness assembly	May 3, 1976.
Bradley Construction, Inc., 8300 Washington NE., Albuquerque, MN 87113	David Bradley, 505-823-2800	1541	General contractors-industrial	June 5, 1978.
RHC, Inc., P.O. Box 1194, Hewitt, TX 76643	Ray Harris, 817-642-3231	1522	General construction	Oct. 5, 1979.

ACTIVE 8(A) COMPANIES—AMERICAN INDIANS—Continued

Company name, address, city, state, and ZIP	Chief executive officer, telephone	SIC	Product/service	Entry date
Riley Paving Co., P.O. Box 521, Hamburg, AR 71646	Claude Riley, Jr., 501–853–5079	1611	Street construction	Aug. 19, 1981.
Mobley Contractors, Inc., P.O. Box 150, Morrilton, AR 72110	Donald F. Mobley, 501–354–2510	1542	General construction	Feb. 10, 1983.
B&M Ciliessen Construction Co., Inc., 2080 Afton Place, Farmington, NM 87401	William J. Cillessen, 505–325–8891	1542	General contractors—nonresidential	Apr. 19, 1983.
MCL Construction, Inc., Route 3, Box 526, Los Lunas, NM 87031	Mathew Lucero, 505–869–3119	1611	Highway construction	May 31, 1983.
JD Duncan Field Engineering & Site Development, Inc., 3305 South Ash Court, Broken Arrow, OK 74012.	J.D. Duncan, 918–451–0230	8911	Engineering—industrial/civil	Do.
Trover Security Service, P.O. Box 1402, McAlester, OK 74502	Charles L. Trover, 918–421–2303	7393	Dectective and protective service	July 20, 1983.
Alamo Woodsmen, P.O. Box 224, Magdelena, NM 87825	Donald Padilla, 505–854–2543	851	Forestry service	July 29, 1983.
Apache Meat Processing Co., Inc., P.O. Box 339, Apache, OK 73006	Robert C. Rowell, 405–588–2186	2011	Meat packaging plant	Do.
Rainbow Construction Co., 815 Early, Suite A, Santa Fe, NM 87501	Marcus E. Scott, 505–988–3715	1541	General construction	Aug. 11, 1983.
Frontier Engineering, Inc., 424 Squires Ave., Stillwater, OK 74074	Peggy J. Shreve, 405–624–1769	7391	Research and development labs	July 2, 1983.
Beggs Dozer Work, Star Route, Box 6, Sims. AR 71969	Carl Beggs, 501–867–3433	1794	Excavating/foundation work	Sept. 1, 1983.
J.E. Farar & Associates, 333 North Shiloh Rd., Suite 10, Garland, TX 75040	Johnny Eugene Farar, 214–487–1044	1731	Communication equipment installation	Oct. 7, 1983.
CCC, Inc., 6004 Anahein NE., Albuquerque, NM 87113	George H. Cillessen, Jr., 505–821–3400	1542	General contractors—nonresidential	Mar. 8, 1984.
FKW, Inc., 900 NW., 63d St., Oklahoma City, OK 73116	Dean M. Wadley, 405–848–2297	7374	Computer and data processing service	Aug. 23, 1984.
Harris/Eagle Joint Venture, P.O. Box 69, Rogers, TX 76569	James Ray Harris, Jr., 817–642–3231	1522	General construction	Sept. 14, 1984.
MACA—Management Assistant Corp. of America, 10166 Bon Aire, P.O. Box 4856, El Paso, TX 79924.	Louise E. Johnson, 505–678–6221	7392	ADP technical service	Oct. 9, 1984.
P Precision Electronic Manufacturing, 6907 East 14th St., Tulsa, OK 74112	Pauline Smith, 918–834–6952	3679	Electronic components	Oct. 23, 1984.
Laguna Industries, Inc., P.O. Box B, Laguna, NM 87026	Ron Solimon, 505–552–6041	3662	Radio/teievision transmitting	Nov. 27, 1984.
Walkingstick Mechanical Contractors, Inc., 133 East Tuxedo Blvd., Bartlesville, OK 74006	Jerry L. Walkingstick, 918–337–0510	1542	General contracting	June 28, 1985.
Patton Construction, Route 2, Box 270, Tahiequah, OK 74464	Walter Alan Patton, 918–456–6666	1794	Excavating	July 1, 1985.
Jet Lightfoot Co., P.O. Box 514, Malvern, AR 72104	Jet Lightfoot, 501–337–1981	1542	General construction	Aug. 29, 1985.
Pillar Construction Co., 25 Donnel Dr., North Little Rock, AR 72116	Virginia (Ginger) Hanlon, 501–834–0238	1542	....do	Sept. 24, 1985.
MBS Consultants, 2828 Las Anayas NW., Albuquerque, NM 87104	Robert R. Navarro, 505–764–9727	7382	Security system services	Jan 7, 1986.
WP Blanket Steel Erectors, Inc., Route 3, Box 495, Wagoner, OK 74467	WP Blanket, 918–485–5989	1541	General construction	Feb. 11, 1986.
Firth Construction Co., Inc., 11820 North Harrel's Ferry Rd., Baton Rouge, LA 70816	Francis E. Firth, 504–273–1194	1541	General building—nonresidential	Mar. 26, 1986.
Matt C. Waters Co., Inc., P.O. Box 3291, Little Rock, AR 72203	Matt C. Waters, 501–374–7172	1542	General construction	Apr. 8, 1986.
Sullivan Construction, 8303 Spring Valley Dr., Austin, TX 78736	Francis Sullivan, 512–288–2336	1611	Highway and street	Sept. 30, 1986.
Tiller Research, Inc., 6307–B Kiowa NE., Albuquerque, NM 87110	Veronica Tiller, 505–881–2376	7333	Graphic artist	Mar. 11, 1986.
AAA McCullough Construction Co., Inc., 1747 Cambridge, Kansas City, MO 64126	Larry G. McCullough, 816–231–7766	1731	Electrical Work	June 14, 1974.
Tomahawk Construction Co., 912 Scott, Kansas City KS 66015	Delmar A. Janovec, 913–621–4233	1611	Highway and street construction	Aug. 20, 1982.
Gene Ables Excavating & Geleral Construction Co., Inc., Topeka, KS 66608	Eugene Ables, 913–235–9836	1794	Excavating	July 22, 1983.
La Manse Industries, P.O. Box VV, Winnebago, NE 68071	Henry Moore, 402–878–2440	2452	Prefabricated wooden buildings	Mar. 22, 1984.
Engineered Rebar Systems Contractor, Inc., P.O. Box 14247, Shawnee Mission, KS 66215	Paul Russell, Sr., 913–782–8522	1542	General construction	Nov. 9, 1984.

Martell & Associates, P.A., 1314 North 38th Str., Kansas City, KS 66102	Leo M. Martell, 913-371-6021	8911	A&E services	Nov. 27, 1984.
Bradley Construction Co., 14633 West 90th Terrace, Lenexa, KS 66215	William P. Bradley, 913-492-3089	1542	General construction nonresdential buildings	Jan. 23, 1985.
Action Manufacturing, Inc., 1004 East Old Highway 40, Warrenton, MO 63383	Brenda K. Underwood, 314-441-5214	3599	Machine shop, jobbing and repair	July 14, 1986.
Sequdyah, Inc., Box 30314, Lincoln, NE 68503	Marshall Prichard, 402-476-2324	1611	Highway and street construction	Sept. 8, 1986.
E.P.I.C., Inc., P.O. Box 541, Liberty, MO 64068	Conny J. Todd, 816-781-7755	7392	Management consulting and public relations	Nov. 17, 1986.
Wayne Postoak, Construction Co., 1500 North 2d St., Lawren KS 66044	Wayne Postoak, 913-841-3190	1611	Highway and street construction	Nov. 17, 1986.
Tribal Industries, Box 308, Poplar, MT 59252	Norman Hollow, 406-768-5151	2298	Camouflage netting	June 21, 1974.
Life Construction Co., Inc., P.O. Box 346, Chamberlain, SD 57	Lorraine Flaws, 605-734-5551	1761	Roofing	Apr. 6, 1978.
Eagle Nest, Inc., Box10, Mandan, ND 58554	Edward M. Danks, 701-663-2338	1611	Highway and street construction	June 6, 1978.
Turtle MT Manufacturing Co., P.O. Box 446, Belcourt, ND 58316	Marlin Belgarde, 701-477-6404	3537	Industrial trailers	June 26, 1979.
Minority Enterprise Service Association, 139 East South Temple, Salt Lake City, UT 84057	David Ushio, 801-224-4674	7392	Management consulting PR SBS	Aug. 20, 1979.
Dubois & Sons Masonry, Inc., Box 783, West Fargo, ND 58078	Quentin Dubois, 701-282-8712	1541	General construction	Sept. 10, 1980.
Poita Construction, Box 240, Belcourt, ND 58316	Leon Poitra, 701-477-3131	1522	....do	Oct. 28, 1980.
LJH Construction, P.O. Box 3416, Rapid City, SD 57709	Lynn Hanson, 605-787-5129	1542	General contractor	Mar. 23, 1981.
Geo-Seis Helicopters, Inc., 2030 Airway Ave., Ft. Collins, CO 80524	William T. Browder, 303-484-3600	4511	Air transportation, certified carrier	Nov. 23, 1983.
P-R Floor covering Co., P.O. Box 5027, Grand Forks, ND 58206	June Randall, 701-746-6394	1752	Floor covering contractor	Jan. 7, 1984.
Firebird ENT, Route 1, Box 718, Eureka MT 59917	Stl Kit WA Rivera, 406-889-3504	851	Forestry services	Jan. 13, 1984.
First Computer Concepts, Inc., P.O. Box 348, Rosebud, SD 57570	Howard Valandra, 605-747-2782	7372	Computer program/software services	Feb. 28, 1984.
Eagle 2000 Engineering & Design, Inc., 201 Main, suite G, Rapid City, SD 57701	Lyle B. Laframboise, 605-341-3520	8911	Engineering architect and surveying	June 3, 1984.
Mousel Construction, Inc., 622 Main St., Rapid City, SD 57701	Agnes L. Mousel, 605-343-1440	1542	General contractor	July 3, 1984.
Lamanite Sheet Metal, 1420 West 2600 South, Mapleton, UT 84663	Ernie Saiz, 801-489-6974	1542	....do	Sept. 14, 1984.
Albrecht Construction, Inc., 3322 Harlou Dr., Billings, MT 59102	Alen Albrecht, 406-652-4114	1542	General construction	Sept. 28, 1984.
Green-Way Ent, Inc., 4896 Birdseye Rd., Helena, MT 59601	Yuvonne Hoovestal, 406-442-5500	1542	....dc	Aug. 31, 1984.
Rogers Thinning & Slashing, Box 110, Troy, MT 59935	James Rogers, 406-295-4554	851	Forestry services, thinning/slashing	Nov. 13, 1984.
Cook Electric, Box 1563, Riverton, WY 82501	Bruce Cook, 307-856-5730	1731	Electrical	Nov. 27, 1984.
Yazzie Construction Co., P.O. Box 1210, Cortez, CO 81321	Robert L. Yazzie, 303-565-4517	1611	Highway street construction	Do.
DM Gray Co., Inc., 510 1st Ave. N., Great Falls, MT 59401	Darryl Gray, 406-761-8506	1542	General contractor	Dec. 6, 1984
Bergen Construction, 700 Main St., Deadwood, SD 57732	Patrick M. Bergen, 605-578-1924	1542	....do	Dec. 4, 1984.
Adkinson Contracting, P.O. Box 495, Hill City, SD 57745	Greg Adkinson, 605-574-2187	851	Forestry service	Jan. 16, 1985.
Bayview Construction, Box 329, Polson, MT 59860	Larry Smith, 406-883-5892	1611	Highway and street construction	Feb. 14, 1985.
Burtch Trucking & Excavating, Box 68, Dixon, MT 59831	Janet Burtch, 406-246-3556	1629	Road maintenance and construction	Aug. 29, 1985.
Yelloweyes Forestry, 125 Humbolt Loop, Helena, MT 59601	Deloris Smart, 406-442-9049	851	Thinning	Sept. 20, 1985.
Partners, Inc., Route 1, Lewistown, MT 59457	Don Parker, 406-538-2439	1623	Water, sewer, pipeline construction	Aug. 29, 1985.
J&R Development, P.O. Box 200, Wounded Knee, SD 57794	Frank R. Ecoffey, 605-867-5000	1542	General contractor	Oct. 21, 1985.
Weeminuche Construction Authority, P.O. Box AA, Towaoc, CO 81334	Rudy Hammond, 303-565-7430	1542	General contractors	May 6,1986.
Putnam Excavating, RR 1, Box 121, Fort Yates, ND 58532	Victoria B. Putman, 701-854-7371	1541	General contracting	Do.
O'Bryan Construction, Box 112, White River, SD 57579	John L. O'Bryan, 605-259-3303	1542	General contractor	Do.
Dailey Construction, 1209 1st St. West, Billings, *ERR97*MT 59101	Tom Dailey, 406-256-9129	1622	Heavy construction	May 27, 1986.
Little Shell Contractors, Box 896, East Helena, MT 59635	Eli St. Germaine, 406-227-6608	1711	Plumbing, heating	Do.
Eaglestaff Electric, Inc., 506 7th St. South, Devils Lake, ND 58301	Steve Jetty, 701-662-7305	1731	Electrical construction	July 1, 1986.

ACTIVE 8(A) COMPANIES—AMERICAN INDIANS—Continued

Company name, address, city, state, and ZIP	Chief executive officer, telephone	SIC	Product/service	Entry date
Indian Affilliates, Inc., 555 South State St., No. 101, Orem, UT 84058	Frank Talker, 801-224-8910	7392	Business/management consulting	Dec. 22, 1986.
Milks Camp Industries, P.O. Box 67, Bonesteel, SD 57317	Hampton Andrews, 605-654-2646	3679	Electronic components	Jan. 30, 1987.
American Indian Consultant, Inc., 7120 East 4th St., Suite 102, Scottsdale, AZ 85251	Timothy R. Wauneka, 602-945-2635	7392	Management consulting	June 5, 1971.
Sams Electronic Assembly, Inc., 105 West 35th St., National City, CA 92050	Edith V. Wegman, 619-426-3401	3679	Electronic components	Mar. 1, 1977.
Tee Pee Engineering, Inc., P.O. Box 6853, San Bernardino, CA 92412	Melvin L. Twist, 714-887-8081	1522	General contractor, mechanical	May 12, 1977.
Space-Lok, Inc., 2526 North Ontario St., Burbank, CA 91504	Frederick W. Wade, 213-849-6751	3452	Manufacture—Bolts, nuts, screws	Feb. 28, 1978.
DTK Co., Inc., 10607 Iowa St., Redlands, CA 92373	Dale T. Koretepeter, 714-792-9774	1761	Roofing contractor	Mar. 15, 1979.
American Indian Resources Organization, Inc., 1979 East Broadway, Tempe, AZ 85282	Albert M. Pooley, 602-967-3860	7392	Consulting and public relation	July 9, 1979.
Ahasteens Cartographic Engraving Service, P.O. Box 824, Fort Defiance, AZ 86504	James Ahasteen, 602-729-5604	7399	Cartographic	July 16, 1979.
Wil Jo Manufacturing, Inc., 642 Duggan Ave., Azusa, CA 91702	Joseph R. Wilson, 818-969-6791	3440	Fabricated struct metal products	Apr. 21, 1980.
Commercial Diversified, Inc., 72033 Twentynine Palms, 29 Palms, CA 92277	Richard A. Cobalis, 619-367-6104	1541	General and commercial contractor	Apr. 27, 1983.
LDG Timber Enterprises, Inc., P.O. Box 1107, Oakhurst, CA 93644	Lloyd David George, 209-683-5716	851	Forestry services	May 12, 1983.
Livermore Machine Works, Inc., 1295 Greg St., Sparks, NV 89431	Henry E. Lockwood, 702-358-8626	3499	Fabricated metal products	Sept. 21, 1983.
Hugh M. McCullough Plumbing Co., P.O. Box 337, Salyer, CA 95563	Colleen McCullough, 916-629-2532	1711	Plumbing and heating	Dec. 6, 1983.
Tecumseh Construction Co., Inc., 1500 South River Rd., West Sacramento, CA 95691	Ben Shawnego, 916-372-3443	1623	Powerline and substation construction	Jan. 7, 1984.
Kilgore Services, 44650 Rodin Ave., Lancaster, CA 93534	John M. Kilgore, 805-942-0826	7369	Base maintenance	Jan. 28, 1984.
Burchett & Good Contractors, Inc., 412 East 8th St., Rend, NV 89512	Claron H. Burchett, 702-789-1162	1629	Heavy construction	May 5, 1984.
Hopi Electronics Enterprises, P.O. Box 100, Polacca, AZ 86042	Alexander W. Ami, 602-727-2536	3678	Connectors electronic application	Aug. 23, 1984.
Custom Technical Services, 5373 Truxtun, Truxtun Plaza, Bakersfield, CA 93301	Robert R. Grimes, 805-327-3396	7378	Computer maintenance and repair	Sept. 11, 1984.
Charles Butts Construction, 1345 South Bethel, Sanger, CA 93657	Charles Butts, 209-875-6702	1611	Highway and street construction	Dec. 6, 1984.
Yurok Cutters, P.O. Box 1057, Hoopa, CA 95546	Earl Griffith, Sr., 916-625-4381	1629	Tree falling and thinning	Mar. 11, 1985.
Moonspace Corp., 245-A Burton Mesa Blvd., Lompoc, CA 93436	Patricia M. Fresh, 805-733-2577	7391	Research and development laboratory	May 24, 1985.
Empire Electric, P.O. Box 6071, Santa Rosa, CA 95406	Dennis A. Merrill, 707-545-4782	1731	Construction, electrical	Do.
Systems Engineering & Management Co., 2380 Camino Vida Roble, suite C, Carlsbad, CA 92008	James W. Tincup, 619-438-8280	8911	Engineering architectural	June 21, 1985.
Sonora Manufacturing, Inc., 14815 South Broadway, Gardena, CA 90248	Linda Collins, 213-770-3683	3728	Auxiliary aircraft equipment	July 22, 1985.
Hernandez Construction Corp., P.O. Box 695, Pine Valley, CA 92062	Arthur S. Hernandez, 619-445-8439	1541	General contractor	Aug. 19, 1985.
Ed Waln Construction, Inc., Box 5060, Chandler, AZ 85226	Edward Waln, 602-899-2657	1542	General contracting	Nov. 27, 1985.
Chippawa Tool & Manufacturing Co., 15330 Colorado Ave., Paramount, CA 90723	Cecil L. Jeanotte, 213-530-0622	3469	Metal stampings	Feb. 11, 1986.
G&J Daughters Landscaping, P.O. Box 81, Salyer, CA 95563	Walter G. Carpenter, 916-629-2015	781	Landscaping	Feb. 19, 1986.
Jackmar Engineering Co., 2000 South Yale St., Unit H, Santa Ana, CA 92704	John M. Jackson, 714-241-8224	3599	Manufacturer, precision machine parts	Do.
Continental Services, Inc., 540 Lagoon Dr., suite 3, Honolulu, HI 96819	Ernest K. Kanekoa, 808-833-4488	7393	Protective services	Apr. 18, 1986.
Crit Construction, Inc., Route 1, Box 23-B, Parker, AZ 85344	Gilbert L. Leivas, 602-669-9211	1629	Heavy construction	May 6, 1986.

Charles L. Isaacs, Jr., General Contractor, 124 Kapaa St., Kailua, HI 96734	Charles L. Isaacs, Jr., 808-262-0016	1542	General contractor	May 27, 1986.
Glenn Moore Logging, P.O. Box 835, Hoopa, CA 95546	Glenn Moore, 916-625-4801	851	Forestry services	July 8, 1986.
Mandan, Inc., P.O. Box 1138, Chandler, AZ 85244	Warren Reidhead, 602-899-5071	1541	General construction, ind. buildings ware-houses.	Apr. 24, 1987.

Effective Date: September 15, 1986

MINORITY CLASS

Code	Description
Ø	Black
1	Puerto Rican
2	American Indian
3	Spanish American
4	Asian
5	Eskimo and Aleut
6	Undetermined
7	Other – including White

ORGANIZATION CONDITION

Code	Description
E	Existing or old established business organization
N	Newly established business organization

OWNERSHIP TYPE

Code	Description
1	Corporation
2	Partnership
3	Proprietorship
4	Divestiture
5	Joint venture

PROCURING AGENCY CODES

Code	Alpha Name	Description
010	USDA	Dept. of Agriculture
015	ABA	American Revolution Bicentennial Admin.
020	ARMY	Dept. of the Army
030	USAF	Dept. of the Air Force
032	ERDA	Energy Research and Development Admin.
033	ACT	Action
035	OPM	Office of Personnel Management
036	CSA	Community Services Admin.
037	CBO	Congressional Budget Office
038	CPSC	Consumer Products Safety Commission
039	CAB	Civil Aeronautic Board
040	COMMERCE	Dept. of Commerce
041	CFTC	Commodity Futures Trading Commission
042	DOD	Dept. of Defense
043	DED	Dept. of Education
045	DOE	Dept. of Energy
050	DLA	Defense Logistics Agency

052	DMA	Defense Mapping Agency
055	DCPA	Defense Civil Preparedness Agency
059	FCC	Federal Communications Commission
060	EEOC	Equal Employment Opportunity Commission
061	FTC	Federal Trade Commission
062	FEC	Federal Election Commission
063	EOP	Executive Office of the President
064	FPC	Federal Power Commission
065	EPA	Environmental Protection Agency
066	GAO	General Accounting Office
067	FEMA	Federal Emergency Management Agency
068	FHLB	Federal Home Loan Bank
070	GSA	General Services Admin.
072	FEA	Federal Energy Admin.
080	HHS	Dept. of Health and Human Services
085	HCDDC	HCD – D.C. Government
090	HUD	Dept. of Housing and Urban Development
095	ICC	Indian Claim Commission
096	ICC	Interstate Commerce Commission
100	INTERIOR	Dept. of Interior
115	JUSTICE	Dept. of Justice
120	LABOR	Dept. of Labor
125	LIBRARY	Library of Congress
130	MPB	Merit System Protection Board
140	NASA	National Aeronautics and Space Admin.
141	NCUA	National Credit Union Administration
142	NCHA	National Capital Housing Authority
143	NLRB	National Labor Relations Board
144	NEH	National Endowment for the Humanities
145	NBS	National Bureau of Standards
146	NSF	National Science Foundation
147	NWS	National Weather Service
148	NMB	National Martime Board
150	NAVY	Dept. of the Navy
155	NRC	U.S. Nuclear Regulatory Commision
156	OHIO NG	Ohio National Guard
161	OPIC	Overseas Private Investment Corporation
162	PADC	Pennsylvania Avenue Development Corp.
163	PEACE	Peace Corp.
164	PCC	Panama Canal Company
165	PBGC	Pension Benefit Guarantee Corp.
170	USPS	U.S. Postal Service
180	RLADC	Redevelopment Land Authority (DC)
190	SBA	Small Business Admin.
191	SEC	Securities and Exchange Commission
192	SMITH	Smithsonian Institution
195	STATE	Dept. of State

196	AID	Agency for International Development
200	DOT	Dept. of Transportation
201	TVA	Tennessee Valley Authority
205	TREASURY	Dept. of Treasury
208	USIA	U.S. Information Agency
210	VA	Veterans Admin.

PROFILE CATEGORIES

Code	Description
F or M (element 1)	Female or Male
V or N (element 2)	Veteran or Non-veteran
H or N (element 3)	Handicapped or Non-handicapped

SPECIAL BANK ACCOUNT DEPOSIT/WITHDRAWAL CODES

Deposit Codes

Source of Funds Code (left box)

A	Advance (Federal) funds
P	Progress payment funds
O	Other

Deposit Codes

Deposit Description Code (right box)

A	Advance disbursement-direct Treasury check
B	Advance disbursement-letter of credit
C	Subcontract progress payment
D	Final payment
E	Check cancellation (or stop payment)
F	Redeposit of excessive advance (Federal) funds
G	Redeposit of progress payment
H	Transfer to master bank account
I	Transfer to subsidiary subcontract account
J	Reversomg erroneous withdrawal
K	Other

Withdrawal Codes

Source of Funds Code (left box)

A	Advance (Federal) funds
P	Progress payment funds
O	Other

Senator DASCHLE. Mr. Swimmer, in the Presidential Commission Report you've recommended that if contracts with Indian business firms could be increased by approximately $200 million in new contracts this would be one-tenth of 1 percent of the total Government procurement. Would you recommend such a goal as a specific Government policy?

Mr. SWIMMER. Would I now? [Laughter.]

Sure. I think the Government should have a policy to that effect. I'm not sure, though, based on the numbers I've just heard if $200 million is enough.

Senator DASCHLE. So, you—is that an unequivocal statement of support?

Mr. SWIMMER. I would say yes, that we should do the best we can to set some targets out there and try to meet them with Indian contractors.

Senator DASCHLE. Our staff may have this information, but since I don't have it before me let me ask you something else relating to the statement that you made regarding the second amendment of the Indian Financing Act. The second amendment, as you related in your statement, would increase the limit of the aggregate amount of loans which may be insured or guaranteed under the act from $200 million to $500 million. You indicated the administration would oppose this for budgetary reasons. Could you give me some estimate as to what the aggregate amount now being utilized currently is? Are we bumped up against the $200 million limit right now?

Mr. SWIMMER. We are approaching it. We are at around $180 million.

Senator DASCHLE. $180 million.

Mr. SWIMMER. But it is in the nature of revolving. Our loan authority each year has been in the neighborhood of $30 million or $40 million, so if half of that amount were to pay off, then the amount bumping against the limit would only be $15 million or $20 million. So, conceivably we, even at our current rate, would have 1 year or 2 years to go before we would impact the——

Senator DASCHLE. What is the breakdown of guaranteed and insured? Do you have that? What is the—in terms of percentages, how much of that money is guaranteed, and how much of that money is insured?

Mr. SWIMMER. I do not believe we have ever used the insured authority.

Senator DASCHLE. So it's all guarantee?

Mr. SWIMMER. It's all guarantee.

Senator DASCHLE. Well, maybe you can, for the record, explain what budgetary implications there are with a revolving $200 million guaranteed loan program. How much exposure does that actually represent for the Federal Government?

Mr. SWIMMER. Well, I'd have to do some research because I'm not sure. I'm really not familiar with how it would be accounted for in the Government, whether it creates an obligation until it's lost or if there is an obligation once it's committed and then it's an income to the treasury once it's paid back. I'd double check on that and would like to have the opportunity to furnish an explanation.

Senator DASCHLE. Yes; well, I guess the point in asking the question is that for the number CBO uses for guaranteed loans in agriculture—and I'm not sure that it is a categoric analysis—but in agriculture a guaranteed loan has a 5-to-1 commitment ratio. For every $5 in guaranteed loans that are made, $1 in Federal commitment is necessary. So you're talking here, in a $200 million program, of about a $40 million commitment at the outset. But in a revolving system that would even decline substantially from that, it would seem to me.

But, in any case, you're asking here for three—I mean, the amendment would increase it to $500, which means that we are actually going up another $20 million. And so I guess I really question whether or not, given the incredible amounts of money in other loan authorities that exist throughout the Federal Government, if we're already bumping up against the $200 million in guaranteed loans, why, from a budgetary point of view, we need to be concerned about the $500 million. Could you respond to that?

Mr. SWIMMER. The response is simply that we are not privy to the information that the committee used to develop the 500 figure. We have not done a significant analysis of it of our own. So without really sitting down and comparing numbers to look at the history of the loan, whether we expect to have substantial increases due to increased economic activity, we couldn't say if $210 million or $50 million, or $300 or $5 or what the number is, and we would like to have the opportunity to explore that somewhat.

Senator DASCHLE. Let me ask you this——

Mr. SWIMMER. Yes.

Senator DASCHLE. It seems to me that if you're already bumping up to the $200 million—we're halfway into this fiscal year—we've virtually hit it, we have no assurance that the revolving fund will generate more loan availability out of the $200 million limit, you would agree, then, that some increase in the $299 million is probably likely?

Mr. SWIMMER. We think so. We expect that at our current rate of funding it will happen sometime in 1988. We don't——

Senator DASCHLE. So it's not necessarily a question of whether it's increased, it's question of how much the increase?

Mr. SWIMMER. That's right.

Senator DASCHLE. OK. I have no further questions, but perhaps the chairman would wish to entertain some.

The CHAIRMAN. Not at this time.

Senator DASCHLE. Well, we thank you both for your testimony.

Mr. SWIMMER. Thank you.

Mr. GONZALES. Thank you.

Senator DASCHLE. We appreciate you coming before the committee this afternoon.

The CHAIRMAN. I'd like to thank my colleague, Senator Daschle, for presiding during my absence.

Our second panel consists of Mr. Conrad Edwards of the Tribal Employment Rights Office of Seattle; Mr. Dan Press, attorney to council for Tribal Employment Rights in Washington; Mr. Ron Hall, executive director of National Indian Contractors Association, accompanied by Mr. Edward Danks; Mr. Steve Stallings, president, United Indian Development Association of California; Mr. Bailey

Barnard, president, National Association of Government Guarantee Lenders, San Francisco; and Ms. Susan Harjo, executive director of the National Congress of American Indians.

Mr. Stallings.

STATEMENT OF STEVE STALLINGS, PRESIDENT, UNITED INDIAN DEVELOPMENT ASSOCIATION, EL MONTE, CA

Mr. STALLINGS. Thank you, Mr. Chairman. I have submitted a written testimony for entry into the official record.

The CHAIRMAN. All of your prepared statements will be inserted immediately following your oral presentations.

Mr. STALLINGS. Thank you.

I will start out with a brief introduction. I am here on behalf of United Indian Development Association, a national business and economic development organization with five offices in the West. We have based our recommendations on our relationship with about 600 Indian-owned companies that are both individually and tribally owned.

Relative to the Buy-Indian Act, we believe that the act itself should be amended to cover a range of Federal agencies beyond the Bureau of Indian Affairs and Indian Health Service that expend money for the benefit of American Indians. Those cases were the Administration for Native Americans, the Bureau of Reclamation, Environmental Protection Agency, the Army Corp of Engineers, the National Park Service, Department of Agriculture, and Housing and Urban Development make expenditures on Indian lands which benefit Indians—the Buy-Indian Act apply to them and would require its implementation in contracting.

We would also recommend that enforcement of the act be improved and implemented primarily through the tribal equal rights office organizations, about which you will hear from the TERO organizations later. There is additional language behind my written recommendation here, but I think I'll defer it to the TERO's. We recommend that the minimum ownership requirement be reduced to 51 percent ownership by a recognized Indian, and that there be no necessity that the business be located on or near a reservation, that the primary criteria be minimum 51 percent Indian ownership and control.

We recommend that to achieve the level of impact needed to create Indian employment on reservations, that each project or classification of projects we reviewed for required employment generation goals, that the employment goals requirement for Buy-Indian be separated from the ownership requirement.

We also recommend that upon adoption of a uniform certification form and process, that Buy-Indian Act certification be applicable to all Federal agencies mentioned above including the eligibility to participate in SBA programs.

We also highly recommend that the process and procedure include a requirement that all contracts issued for the benefit of Indians be advertised and contracted as Buy-Indian. Right now there is unchecked discretionary authority allowed, and many valuable procurement and business opportunities are lost as a result of this discretion at the Bureau of Indian Affairs.

We recommend that all contracts be issued Buy-Indian, and in a case where no less than two competitive Indian firms can be found, that the contracts always be issued Buy-Indian.

Relative to Indian preference 7(b) of the Indian Self-Determination Act: again, we request that all contracts be assumed to be issued Indian preference, and I've laid out that process for you on page 14 of my written testimony.

In those cases where Indian bids for particular procurements are over the maximum allowed for that particular procurement, opposed to the case now where the bid is actually thrown out and rebid, which contributes to lost housing, lost facilities, and lost business opportunities to Indians. We recommend in those cases where Indian bids exceed the Government estimate, that this procurement be satisfied through a negotiation process rather than rebid.

Relative to the 8(a) program of the Small Business Administration, there is a particular problem even though SBA has done an excellent job in increasing the level of certification of Indian 8(a) companies; the numbers they report are suspect when you look at the fact that certification as an Indian firm at the SBA is a self-identification process. The SBA and the Bureau of Indian Affairs need to work together so SBA can adopt a certification from the Bureau of Indian Affairs as the first criteria for participation in their programs.

The discussion relative to Mr Gonzales' testimony, needs to be examined from the standpoint that while the numbers seem impressive—$262 million in procurement in 90 contracts—if we take a look at a couple of the largest contracts, a couple of them are near $100 million. So, if you take those three contracts out of the procurement level currently going to Indians under the 8(a) program in the 90 contracts, it is a minuscule amount.

There are many Indian companies in the program that have participated prior to the memorandum of agreement, who have never received a contract in the program to this date.

The CHAIRMAN. May I interrupt you at this moment?

Mr. STALLINGS. Yes.

The CHAIRMAN. You spoke of $100 million contracts? Can you describe those contracts?

Mr. STALLINGS. Well, Devils Lake Sioux Manufacturing—and I don't know the exact amount of the contract. Dan, do you know? I think it approaches——

Mr. PRESS. Between Devils Lake and Fort Peck I think it's $100 million.

Mr. STALLINGS. Between two contracts it's nearly $100 million. And they're important contracts to the communities they're going to, though I think that the numbers can be twisted to seem like we're doing a lot when, really, those contracts were in place prior to the special memorandum of agreement between DOD and the SBA.

So, a better job needs to be done at the procurement end of the 8(a) program at SBA and DOD.

We do recommend that the fixed program participation for Indians be expanded, and we're recommending that it be two times the maximum participation of other companies in the program. I think

the justification is the limited ability and access to markets of Indian-owned companies, especially on reservations.

Until now the memorandum of agreement between SBA and DOD has resulted in some new contract opportunities for Indians, and an increased number of Indians in the program. However, without more enforcement and more pressure on the Department of Defense, little improvement can be made in the actual level of procurement to Indians. We recommend that a minimum set-aside be established for DOD Buy-Indian procurement at one-half of 1 percent of the Defense procurement budget.

That concludes my comments on Indian preference.

[Prepared statement of Mr. Stallings appears in the appendix.]

The CHAIRMAN. Who is the next witness?

Mr. Edwards.

STATEMENT OF CONRAD EDWARDS, TRIBAL EMPLOYMENT RIGHTS OFFICE, SEATTLE, WA

Mr. EDWARDS. Mr. Chairman, members of the committee, I am Conrad Edwards representing Council for Tribal Employment Rights, and my testimony is submitted in conjuction with that of Dan Press, our General Counsel.

Thank you for the opportunity to address the committee and provide testimony on Indian preference and economic development. These are two of the most crucial challenges facing Indian people today, and it comes at a time when we're putting the caps on 200 years of, basically, economic dependency on Federal resources and exclusion from decisionmaking processes, and the denial of opportunity to participate in our own—in the economic development of our own communities.

I'd like to take the opportunity this afternoon to introduce the committee to what we term a "tribal alternative" to economic history repeating itself.

The Council for Tribal Employment Rights is an Indian owned and operated non-profit corporation that represents the interests of 104 tribal employment rights offices, or TERO tribes. And you heard Steve mention the acronym "TERO." It stands for Tribal Employment Rights Office.

Our organization provides training and technical assistance to Indian tribes in all facets of Indian preference in employment, training, business, and economic development. Utilizing our experience on the reservation, we've developed a concept, the TERO concept of Indian self-determination. It's actually a plan. It's a sovereignty-based, self-help, systematic plan which operates on the premise that employment rights are sovereign and protected the same as water and minerals and fishing and hunting rights.

Our concept begins with the economic development of the individual Indian workers through their gainful and meaningful employment. This is accomplished through utilizing their inherent sovereignty of the tribes to enforce existing Federal laws and to develop tribal laws which, strictly enforced, result in increased employment for Indian people. It also results in the increased training opportunities, business opportunities within the exterior bound-

aries of the reservation, and in some cases in the adjacent communities.

Once the tribe, I guess, successfully captures the existing opportunities that are available to Indians that are being dominated by non-Indians, and they begin to qualify tribal members in sufficient number, the tribes then begin to use these same laws and these same concepts to develop new opportunities on and adjacent to the reservation in other industries.

Through effective public relations and negotiations directly with employers off the reservation, the TERO's have successfully created and developed new opportunities for Indian people with employers that, prior to this time, had no interest, nor felt no responsibility, to respond to the Indian employment needs.

The essential elements of our concept are: No. 1, a strong enforcement program which optimizes existing Federal and Indian preference laws. There are groups of laws that protect the employment rights of Indian people that heretofore have not been enforced adequately.

No. 2, the development of a tribal legal framework and governance infrastructure to ensure local controls. The development of the tribal employment rights ordinance actually puts the tribe in charge of regulating labor law within the exterior boundaries of their reservation.

No. 3, establishing non-adversarial collaborative relationships with public and private sector employers operating on or near the reservation. Most employers who operate on or adjacent to the reservation oftentimes have contracts with the tribe or depend a lot on funds allocated to tribes to support some of their business.

Over the past 10 years, the Tribal Employment Rights Office, or TERO's, have applied the TERO concept with dramatic results on the reservation levels in the areas of employment and training. I've got some examples that I'd like to provide you with just briefly, and we'll be glad to answer questions on any of these examples.

The Makah Tribe of Washington State today is experiencing the lowest unemployment rate, at 27 percent, that it has experienced in over 100 years.

The Upper Skagit Valley Tribe, also of Washington State, last year reduced their reservation unemployment rate from 59 percent to 30 percent during the first 6 months of TERO operations.

The Blackfeet Tribe of Montana experienced 0 to 25 percent Indian hire on a few of the State funded and the Federally funded projects that were being carried out in their reservations back in 1978. Today that same tribe, through their TERO effort, consistently experiences a 60 to 70 percent Indian hire on all public, private, and tribally funded projects on their reservation, and on some occasions, specifically on Indian Health Service Hospital, they were able to negotiate a 95-percent Indian hire—and this is where previously employers had said there were no qualified Indian people.

The Shoshone-Arapaho Tribes of Wyoming began their TERO operations in 1982, and today have a self-sufficient TERO operation which is complete with a tribal employment rights ordinance, a set of tribal business codes, and tribally owned and operated Bureau of Apprenticeship Training certified program in place.

One of the impacts that we need to discuss here is that this TERO program, for the Shoshone-Arapaho tribes last year, contributed $100,000 in fee-generated—TERO-generated fees, business licenses and things like that—to the tribal general fund, which is an indication that these TERO programs contribute to the overall economic development of the tribes.

One of the most significant impacts occurred last year involved Equal Employment Opportunity Commission funding of 34 of these TERO operations. As I mentioned, we have 104 of these Tribal Employment Rights Offices nationwide. The funds were allocated to direct fixed-price contracts of $25,000 to 34 Indian tribes. They were funded to enforce title 7 of the 1964 Civil Rights Act on behalf of EEOC on the reservations.

The investment resulted in—and these are EEOC's figures, these figures were provided by EEOC—in $16,712,111 in back-pay wages, contracts, fees, fines, and damages, which were generated from the charges against employers that had discriminated against Indian people.

In addition, those same TERO's—in addition to collecting or to generating that type of paybacks from employers who practice discrimination—in addition the TERO's were able to place 5,672 people, individual Indian workers. They also referred over 12,000, and they recruited some 9,000 individual Indian workers.

What does this mean in terms of economic impact to the Indian community? It should be noted that the 34 TERO's that were funded by EEOC represent only one-third of the total number of TERO's operating across the United States. When this one-third is coupled with the other two-thirds, it represents an estimated 21,000 Indian workers placed last year nationwide at an average wage of $11 per hour, which, in turn, when this $11 per hour is factored out, it generated close to $480 million worth of economic impact in the Indian communities as these dollars continued to turn over within the reservation area.

These examples are just indicative of the capabilities of Indian tribes under some of the adverse conditions that we've been operating under, and the committee can imagine what could be accomplished if we had some assistance.

While the tribes have made significant progress in dealing with some of the various employment and training opportunities, there is still a critical lack of economic activity in Indian country, and until these levels of economic activity are increased, we can look forward to not much further growth, or limited further growth, and hopelessness for some of the individual Indian employees.

Further growth and development requires some essential elements. One is the outside investment in the development of tribal resources and communities. Another, we feel, is the adequate bonding and capital resources to assist and encourage Indian entrepreneurship.

And, finally, adequate technical resources in business enterprise and financial management to ensure successful economic ventures.

Some of the legislation that you have before you today, specifically S. 788, the Indian Economic Development Act of 1987, S. 721, the Indian Development Finance Corporation Act, and the amend-

ments to the Indian Finance Act and the Indian Self-Determination Act, all seek to address some of the aforementioned needs.

We, the Council for Tribal Employment Rights, support the passage of these acts and amendments because they promote and encourage Indian economic development, and they also provide us with valuable technical and financial resources.

The amendments that are proposed seek to clarify and put teeth into existing laws, which to date have lacked adequate enforcement procedures and clearly stated responsibilities for the agencies.

I think that at this time I would like to defer the technical discussion of amendment 7(b) to our general counsel, who can outline or delineate for the committee the specific amendments.

Again, I would like to thank you for the time and opportunity to provide you with our perspective on Indian preference and economic development.

The CHAIRMAN. Thank you, sir.

Mr. EDWARDS. And I defer to Dan Press.

[Prepared statement of Mr. Edwards appears in the appendix.]

The CHAIRMAN. Mr. Press.

STATEMENT OF DANIEL S. PRESS, ATTORNEY TO COUNCIL FOR TRIBAL EMPLOYMENT RIGHTS, WASHINGTON, DC

Mr. PRESS. Thank you, Mr. Chairman.

My name is Daniel Press. I'm the general counsel for the Council for Tribal Employment Rights. I'm also the general counsel for the American Council of Architects and Engineers.

I spent the last 15 years working in the areas of Indian preference and Indian economic development. My testimony gives some more detail on that. I've been up a lot of blind alleys, a lot of dead ends, and come to some very basic conclusions about what's going on out there and what needs to be done. I'd like to share that with the committee if I may.

First is that there are some very serious barriers to Indian economic development out there. One set of those barriers is just outright rank discrimination. Other barriers are what you would consider real barriers: gaps, lacks, absences on the reservation. And I think both of those barriers can be overcome through a joint Federal-tribal effort using Indian preference as their tool.

The TERO program just celebrated its 10th anniversary, and it proved that a joint Federal-tribal effort, the Federal Government using its Indian preference capability and legal authority, and the tribe using theirs, can make a very dramatic effort and change in the economic situation on reservations. I think Conrad just gave you an indication, through his data, of the kinds of changes that can be made.

[Prepared statement of Mr. Press appears in the appendix.]

The CHAIRMAN. For clarification, by "discrimination"—discrimination practiced by BIA?

Mr. PRESS. No, Mr. Chairman. Discrimination practiced by private employers, they could be contractors discriminating against workers, discriminating against subcontracts, banks discriminating against Indians seeking loans. Most of the TERO experience has been on employment——

The CHAIRMAN. This is on reservation?

Mr. PRESS. On reservation. I'll give you a good example. FMC Corporation, the people who brought us the Bradley tank that's been in the paper recently, has a phosphate processing facility on the Shoshone Banrock Reservation, Fort Hall, ID. They use the reservation's minerals. They hire 600-and-some-odd people. Everyone who came into that facility came in as an entry-level, unskilled worker. Out of the 600 people, 26 of them are Indian, and that's up from 4 or 5 years ago. Right on the reservation. They are now being looked at by a variety of anti-discrimination agencies, but there's no excuse for that other than discrimination.

The CHAIRMAN. Are they on the reservation with the consent of the Tribal Council?

Mr. PRESS. Yes.

The CHAIRMAN. Did the Tribal Council consent to this type of discrimination?

Mr. PRESS. The tribe didn't consent to it. They're now taking FMC to court to eliminate it. It's a problem they've been looking at and concerned about for a long time, and they've finally——

The CHAIRMAN. Had the contract called for equal opportunity employment?

Mr. PRESS. The contract called for preferenced Indians. Until 1981 it——

The CHAIRMAN. Why don't they throw them off the reservation?

Mr. PRESS. It may come to that. We hope we don't have to do that, Mr. Chairman. What we'd like to do is see that 600 jobs, or a larger proportion of those 600 jobs, go to tribal members.

But it shows that there are those barriers out there, and they need to be eliminated. The only ones who can eliminate them are the Federal Government and the tribes.

We'd just as soon not throw people off the reservations. I think it sets a bad atmosphere, a bad environment. But I also think they can be overcome. In the experiences Conrad was talking about, the TERO's have been able to successfully overcome them. Some take longer than others.

But there are other barriers out there, too, and they're the kinds that I think the committee is well aware of; the lack of an infrastructure, the lack of other economic activities to draw an employer to the reservation. Given the high unemployment on most reservations, what you need is a large employer out there who can create a critical mass, who can hire a large number of people and also start spinning off subcontracts, training people in management capability—you need something substantial out there to get it started. Eight (a) is not the answer to that need. I was one of the persons who drafted the memorandum of understanding that Mr. Gonzales talked about. I went out around the country doing dog and pony shows telling tribes and Indian businesses about the advantages of it. I think it's been a dismal failure.

When the program started there were 144 Indian companies registered in the 8(a) program. They were supposed to add 75 a year; 3 years later there are only 209. That tells me that in 3 years they added 75, give or take a few.

But most importantly, the 8(a) program is not an employment program, and it's not designed to create large employment opportu-

nities on the reservation—for two reasons: the most important is they're looking at small business development; second, you can't joint-venture with an established large company. If a tribe wanted to make widgets and they said, "OK, IBM you're an excellent widget maker, will you joint-venture with us and bring us all of your capability to produce a quality product?" you wouldn't qualify as an 8(a). The only companies you can joint-venture with under the 8(a) program is another small and disadvantaged company, or a company that has no background in the particular area in which you are trying to go into. So either you have to go for a small company, or a company that has nothing to offer you.

So, the 8(a) program is not designed to create large employment projects on the reservation, and I think you could beat SBA from now until doomsday and it will never become that kind of program, because that's not really what their major mandate is.

So, what is needed is a new program, and we believe that a joint Federal-tribal program, using Indian preference—a different approach at Indian preference than has been used in the past—with an Indian preference program, can achieve the same objectives in the area of economic development that Indian preference has achieved in the area of employment. I've prepared—and attached to my testimony are two bills that I've labeled 7(c) and 7(d) to the Indian Self-Determination Act. Seven (b) is the existing Indian preference provision. The new 7(c) that I've proposed are amendments to the Buy-Indian Act that would address all of the issues that Steve Stallings talked about: the need to address the *Glover* case, the need to determine what the percentage of ownership should be, and the need to expand it beyond the BIA and Indian Health Service to other agencies doing contracts for the benefit of Indians.

I'd be glad to answer questions about that proposal. But the Federal activities on the reservation are not going to produce a manufacturing sector. The BIA, IHS, Bureau of Rec don't really engage in manufacturing for the benefit of Indians. It will produce a lot of construction contracting and some consulting contract—again, it won't create that nucleus of manufacturing that reservations need.

What I proposed in 7(d) is that the Congress create a program comparable to the program for the blind and handicapped, which allows a committee set up for Indian procurement to reach into DOD and say, "We want that contract for an Indian tribe, a 51 percent Indian-owned tribal enterprise that can joint-venture with IBM, with Sperry, with General Motors—whoever has the most expertise—if it's on the reservation, if 75 percent of its employees are Indian, just as for the blind and handicapped you qualify only if 75 percent of your employees are blind or handicapped."

The blind and handicapped program has been an extraordinarily successful program in creating employment for the blind and handicapped, and we think the same model can work very successfully on reservations.

The CHAIRMAN. What is your rationale for 90 percent for those enterprises outside the reservation?

Mr. PRESS. Under the Buy-Indian Act, there are Indian enterprises that have started up and may have brought in a non-Indian partner, or may need to get capital by selling equity shares in their

company. If they are 100 percent, they are unable to bring in that equity capital. If they are 90 percent, they can sell 10 percent of the share of that company and still be predominantly Indian, but still have the access to outside capital.

The CHAIRMAN. Do you think 10 percent would be sufficient incentive for non-Indians to participate in a joint venture?

Mr. PRESS. I think there are competing factors there. On the other hand, if you get too much beyond that you have an open invitation to fronts. The most serious problem facing the Buy-Indian Act now—or any Indian preference contracting program—are the large number of fronts.

When a company like Morrison-Knudson will take an Indian individual out of the boonies and say, "You are now 51 percent owner of an Indian company" and then they qualify for Indian preference, it's not promoting Indian economic development, because when Morrison-Knudson is done with that person, he hasn't learned anything, they discard him.

You have to find a balance between the legitimate needs of legitimate Indian owned companies and restrictions to the fronts that have been operating out there and not only hurting Indian owned companies, but hurting the concept of Indian preference. That was an effort to reach a balance. It is nowhere written in stone, and I think there's room for flexibility, but I think the committee has to realize there are pressures coming from two directions, and——

The CHAIRMAN. Mr. Stallings, do you share this view?

Mr. STALLINGS. Well, Senator, irrespective of the level of ownership, a minority front is a minority front. You could have 100 percent minority ownership and it will still be controlled by outside interests.

There is a separate issue here, and I think it's really enforcement. How do you enforce any preference? You probably need to build in mechanisms to make that happen versus any required level of ownership. But minimum 51 percent ownership does give an Indian control of the business if properly structured.

Mr. PRESS. I agree with Steve that you need a number of different ways to weed out the fronts, but I think the percentage of ownership needs to be one of them, clearly not the only one, but it does put some limitations on it.

I'd like to go back to the concept of creating a committee for Indian procurement that can do for the tribe what the Blind and Handicapped Committee has done for the blind and handicapped.

Again, it's an approach that would allow—just the tribe, not an individual Indian business, but a tribe—to reach into DOD, not through the 8(a) program, with no fixed period of participation, but say, as the blind and handicapped do, "We want to make widgets for you, and we want to have that contract forever, and it will employ at least 75 percent Indian, on our reservation, we'll joint venture with IBM"—because one of the concerns of DOD and one of the reasons they've resisted the memorandum of understanding is: they are worried that there will not be a quality product out there, and if you come in with an IBM it provides them a level of comfort on that.

So, the program would address DOD's concern. It would provide permanence, it would provide lots of employment, and it would

create that nucleus on the reservation of employment and of manufacturing sector that, hopefully, will attract other activities.

The approach, I think, has a number of advantages. One, I think it is relatively simple and direct and it has a clear precedent in the blind and handicapped program. Second, it's limited. It's limited just to tribes, and it's limited by the amount of dollars—and we've talked about a percentage of Federal procurement—and it limits the amount of contract dollars that tribes can take based on a percentage of total Federal procurement.

One of the other advantages, I think, particularly for getting something done quickly, is that it would not require any new appropriations. I know at this point any large new appropriations could be a barrier to any economic approach. There are really no up front costs to the program. The BIA could fund this thing out of existing resources, probably wouldn't cost more than $300,000 or $400,000 to implement. So, I think it's the kind of quick and dirty that can be put into effect, that can create the kind of employment that needs to be created.

You asked the question before about the $100 million in contracts—those are two programs, one on Fort Peck and one in Devils Lake Sioux, that are effectively the kind of program I'm talking about. They're in the 8(a) program, but they got in before 8(a) set the kind of limitations on joint-venturing and fixed participation.

On Fort Peck, for example, Brunswick, a large manufacturer, is joint-venturing with the tribe to produce a product for DOD. DOD is pleased with the quality. It employs 400-and-some-odd Indian people in the facility. The project has gone on now for 10 years. It is possible that SBA is going to try to cut them off. But what they have now is two success stories out there, and I think if you look at what made those successful and try and replicate them that you can have some very substantial employment.

But those programs would not be possible today under the SBA program. So you need to create a new program that recreates the situation that existed 10 or 12 years ago on the Fort Peck and Devils Lake Sioux programs went into effect. So I urge the committee to take a look at those proposals and, if possible, to move quickly on them.

The CHAIRMAN. I gather that you must have discussed this matter with companies such as IBM, Sperry?

Mr. PRESS. Excuse me?

The CHAIRMAN. Your ideas. Have you discussed you ideas with major manufacturing concerns?

Mr. PRESS. Yes; I can't say those two companies specifically, but I have talked to other companies.

The CHAIRMAN. What was the reception?

Mr. PRESS. If they can have a guaranteed defense contract and 49 percent ownership in it, they would be very, very eager. If you talk to the people at Brunswick, they are having a very profitable relationship with the tribe at Fort Peck. I think they would be a tremendous advertisement because they're making money at it. They are helping their image in the community. They come out well on it, and I think any other large company that had the opportunity, had the expertise, would be very eager to follow suit.

The CHAIRMAN. Thank you very much.
Who is the next witness?
Mr. HALL. I believe I am.
The CHAIRMAN. Mr. Ron Hall.

STATEMENT OF RON HALL, EXECUTIVE DIRECTOR, NATIONAL INDIAN CONTRACTORS' ASSOCIATION, ACCOMPANIED BY EDWARD DANKS, PRESIDENT, NICA

Mr. HALL. That's correct.

Thank you for the invitation to come and speak with you this afternoon.

My name is Ron Hall and I represent the National Indian Contractors Association. Accompanying me today is Ed Danks, the association's president.

I'd like to first let you know a few things about the association. We came into existence in 1983—which is no coincidence that we coincided with the Surface Transportation Assistance Act, which was activated that year—and created contracting opportunities in the road construction business for Indians, and gave Indian preference in that field. That was our route around the Glover decision in a narrow area. Since that time we have been actively seeking expansion of contracting opportunities in other areas. We have seen firms crop up in the housing industry and other electrical companies.

Today we'd like to support a large portion of the material that's offered by, I guess, Mr. Press, in his amendment to section 7(b) by addition of section 7(c). We do need to expand Buy-Indian contracting authority throughout the entire Bureau of Indian Affairs contracting activity, and Department of Interior contracting activity, where it benefits an Indian tribe.

The opportunities that exist out there by this contracting activity provides many opportunities for business growth and development. A number of the projects are the size to which a starting company can prepare a bid and can get a start into a business and grow. It's a real place to start.

One of the provisions that we have problems with is the ownership provisions. We understand, by reading the provision, that it's intended to increase employment on the reservations.

As an association, the National Indian contractors have always sought to work with the TERO organizations, we've always recognized tribal authority to control employment by contractors performing on reservations. We have been seeking, over the years, to get statistics that are evidence of how we are progressing in that area, how many Indian contractors are getting contracts, what is their employment record? We've had a great amount of difficulty and we've basically been unable to find that figure out. But our experience tells us that as Indian contractors we do hire Indians when we go onto reservations to perform a project. The current standard is that would be 100 percent owned. With that requirement, naturally, we have a large number of Indian people accessible to us to hire, and we pursue that route.

We don't understand what the connection is between percent of ownership and increased employment in that context, where 51

percent ownership person should employ Indians to the greatest extent possible, whatever requirement is imposed by the tribe, same as a 100-percent owned firm should.

We think one provision that needs to be looked at: rather than reducing the ownership provision requirement to allow access to starting a business, rather than bringing in a joint-venture type idea, we feel the large barrier to Indians is that they do not have access to bonding. A large number of projects that they are capable of doing, when it comes to analyzing their books and preparing the bid, qualifying through the Government procedures, they cannot get the bond to back them—put the bid on the table.

It's not necessarily a question of we don't have a non-Indian partner to back us on the project. So if we could see some encouragement in the bonding area, and I think I'd like address is in the Indian Finance Act amendment.

The distinction that is made between on reservation and off-reservation companies is also something that we don't understand why that would increase employment on reservations, if that's the object of this provision, or encourage development of the Indian companies. Through basic necessity, a large number of companies have had to move from the reservation to a border town, or to a city, just to—I guess in the process of learning how to compete, they've realized that they need to have access to transportation and supplies and equipment services that are part of the contracting industry—building and roads and so on. And access to that material means you need to be into an urban setting. That's the main impetus for the move from a reservation-located business to a city, to an off-reservation site. It has been their business judgment that's prompted that move.

By allowing on reservation companies to have a different ownership advantage, I guess, they can joint-venture, isn't consistent with the business necessity of viable business having to adjust to their supply needs and running the business trying to cuts costs.

One item that National Indian Contractors has been voicing since we came into existence is the need to prevent fronting. A 100-percent owned firm is an easy—is easier, there has been abuse in that area—but it is easier to monitor them to make sure that they are not a front operation. A 51-percent owned firm is very subject to abuse. It's splitting hairs trying to determine whether or not this person is a front or not, whether the benefit is going to the Indian partner, or is the entire business decisionmaking process, the growth that's intended by the Buy-Indian Act, being usurped by the non-Indian partner, and the Indian partner get nothing but a percentage of profit for the sake of signing a few papers.

We need to control the—we'd like to see some more monitoring. We'd like to see the percentage of ownership upheld, and the problem with fronting addressed by strict certification criteria and uniform certification criteria. At this time the standards which Indian contractors must meet in trying to perform in each area of the Bureau of Indian Affairs is not consistent, and we'd like to see some uniform procedures enacted.

On the Indian Finance Act amendment, we would like to go on record as supporting that provision where banks would be encour-

aged to give insured loans—Government insured loans—so that Indian contractors would actually have access to a better market.

We would like to see the bonding capability of the Bureau of Indian Affairs developed so that Indian contractors could turn to some entity, where they have a great need and they're ineligible in other open market bonding companies, to get a bond to perform some of these initial projects that they need to get their business operating. We feel bonding has been the major stumbling block to the development of Indian business on the reservations.

That's all I have.

[Prepared statement of Mr. Hall appears in the appendix.]

The CHAIRMAN. Thank you very much, Mr. Hall. I gather Mr. Barnard wishes to proceed next.

STATEMENT OF BAILEY S. BARNARD, PRESIDENT, NATIONAL ASSOCIATION OF GOVERNMENT GUARANTEE LENDERS; SAN FRANCISCO, CA

Mr. BARNARD. Thank you, Mr. Chairman.

My name is Bailey Barnard. I'm chairman and chief executive officer of First Capital California Business and Industrial Development Corporation, a firm licensed by the California Banking Department to specialize in making Government guaranteed loans, primarily loans guaranteed by the SBA.

I'm also president of the National Association of Government Guaranteed Lenders, NAGGL, which represents banks and nonbanks active in Government guaranteed lending throughout the country.

Thank you for the opportunity to appear before you this afternoon to discuss the proposed changes to the Indian Financing Act.

A little background on NAGGL. NAGGL began in 1984, after being organized by five major banks in California, for the purpose of mutual sharing of information on SBA loan regulations and the secondary market for SBA loans.

NAGGL has attracted other bank and nonbank lenders who have similar interests in enhancement of Government guaranteed loan programs. Currently NAGGL has in excess of 100 members nationwide, representing commercial banks, savings, and loans, nonbank lenders, and other nonlender financial companies.

NAGGL members are large and small financial institutions who, collectively, are responsible for a substantial part of all SBA guaranteed lending, and secondary market activity done nationally.

NAGGL's primary mission is to build a greater awareness amongst lenders and decisionmakers in both the public and private sectors of the true benefits of Government guaranteed lending programs, their contributions of job creation and economic growth, and to ensure that such programs are structured and administered effectively to facilitate lender involvement in this public-private partnership for ultimate benefit of the Nation's small businesses.

NAGGL also acts as a clearinghouse for information on Government guaranteed lending programs and the secondary market for such loans.

The Indian Finance Act has been a valuable source of credit for growing tribal and individual Indian owned businesses. The act

can, however, be greatly improved to enhance the availability of future financing for American Indian economic growth.

NAGGL supports the following recommendations to enhance the Indian Finance Act: increase the authorization under the Indian Finance Act to $500 million in fiscal year 1988 and each year thereafter; allow lead lenders, to include all regulated banks, savings and loans, nonbanks, insurance companies, and business finance companies; make BIA guaranteed loans fully transferrable in the secondary market, similar to the SBA loan guarantee program; the guarantee must be a direct obligation of the treasury and carry a full faith and credit obligation in order for this to work successfully; allow for a one-time up-front loan fee rather than the current one-half point per month BIA fee—this would prevent null and void guarantees for non-payment of the fee; working with the Small Business Administration, and using their loan program documents as a model, develop and agree upon common and standardized loan applications and agreements; allow pooling of BIA loans to enhance their sale in the secondary market; BIA must guarantee timely payment of principal and interest, which payment can be administered through the use of a fiscal and transfer agent to handle the secondary market sale; increase the size of eligible individual loans to $500,000; using the SBA-administered loan programs as a model, delegate the financial program to the agency level, but expand and improve the skills of the agency credit staff; add to the program for Indian contractors a revolving line of credit program to meet short-term credit needs; and add full faith guarantee behind BIA letters of credit to serve in lieu of bonding for Federally-funded construction projects.

It is our contention that these recommendations would enhance the Indian Finance Act programs by increasing lender participation through the creation of more standardized documentation and easier access to the institutional secondary market for BIA guaranteed paper. Such enhancements would improve the access to reasonably priced financing for qualified Indian owned businesses.

We would welcome the opportunity to work with the committee. And, again, I appreciate the opportunity to present our recommendations. Although I am not an expert in BIA programs, I would be happy to answer questions the committee might have in regard to the SBA programs and a secondary market, which could be a model for the BIA program.

Thank you.

[Prepared statement of Mr. Barnard appears in the appendix.]

The CHAIRMAN. Mr. Hall, are the corporate members of your association 100 percent Indian owned?

Mr. HALL. No; there are some where the requirement is a 51-percent ownership, depending on which program they're——

The CHAIRMAN. What sort of hiring practices do they carry out?

Mr. HALL. When they're performing on reservation projects—I can't speak for each individual—I'm certain that——

The CHAIRMAN. On or off-reservations?

Mr. HALL. On off reservation?

The CHAIRMAN. On or off.

Mr. HALL. Many of them are small. They are family-owned businesses, they hire family members. I think it's safe to make a gener-

al statement like that. Beyond that, I believe they, on an off-reservation site, their hiring practice are equal opportunity. They're not bound—they don't have any criteria where they have to do an Indian preference hire.

The CHAIRMAN. Mr. Danks.

Mr. DANKS. Senator, there would be some—our association has tried on two or three different occasions—in fact, we participated with Mr. Press and with some people in the Bureau of Indian Affairs staff back in the early days of the reauthorization of the Buy-Indian Act in the Surface Transportation Act—in an effort to police ourselves to see what we were doing, we asked the Bureau of Indian Affairs to include in their payroll report a section that had an I.D. number wherein every Indian employee was given an I.D. number from the tribe or area there was so that we could assimilate the data to see what are we doing. Are we doing what we say we're going to do? We haven't been able to get hold of that data yet to actually find out where we are. Now, we have some abusers—we know that—that have come into the system, ripped it off, and hired predominantly their own forces, I guess, the front operator brought his own forces from somewhere, slipped into a reservation, knocked out a quick job, and moved on down the road.

But predominantly, Indian contractors are 100 percent Indian owned. Indian contractors are the small contractors that may have 10, 15, 20 employees, and fully 80 or 90 percent of those employees in that scenario are Indian people. They might have an accountant that may not be an Indian, or they may have a secretary or a wife of one of the people that's not an Indian or something like that, but I would say the majority of our 240 member firms fit in that tiny business category.

The CHAIRMAN. Well, I thank you gentleman very much. I will be looking forward to receiving your recommendations on changes and amendments, and we hope to report this measure in the near future. I think the time for action has come. We have had many hearings. I can assure you that we will have action here.

Thank you very much.

Mr. DANKS. Thank you, sir.

The CHAIRMAN. The third panel consists of the executive director of the National Congress of American Indians, Ms. Suzan Harjo; chairman of the Shoshone Tribal Council of Fort Washakie, of Wyoming, the Honorable John Washakie; and the vice chairman of the Navajo Nation, Window Rock, AZ, the Honorable Johnny R. Thompson.

Suzan, are you going to be the first?

STATEMENT OF SUZAN HARJO, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Ms. HARJO. Thank you, Mr. Chairman. You have our prepared statement, which I presume will be included in the record.

The CHAIRMAN. All of your prepared statements will be inserted in the record immediately following your oral presentations.

Ms. HARJO. Thank you.

Our prepared statement addresses only the Buy-Indian Act, and makes the point that the Federal Government, either by direct

action or inaction, is responsible for the condition of poverty in Indian Country, and has an affirmative responsibility to resolve that problem and that condition. And we are most appreciative of your personal efforts, as well as the efforts of the other members and staff of the committee, to find solutions.

We understand the OMB position is that this matter needs to be studied. OMB always prefers a study over action, and we have been studied to death, literally in some cases. Now is the time for action. Some things can be done very simply, as you've heard from the previous panel, either through a direct set-aside approach or other mechanism, and we would recommend a vigorous, affirmative, positive initiative that would span at least one decade, that would require the Federal agencies to contract with Indian businesses and tribal businesses preferentially.

We have had experience with the discretionary contracting provisions, and we don't think that those have worked very well. We do ask, in our written statement, for the committee to examine how often Indian preference in contracting has been waived in the Bureau of Indian Affairs itself in this current administration. We think it has been often, and to the detriment of Indian organizations and Indian businesses.

One recent example was in the request for proposals for an Indian employment program. The Buy-Indian Act was waived, and a non-Indian firm, along with two Indian organizations, did get those contracts. Had Indian preference not been waived, the non-Indian firm probably would not have qualified, and we understand that on the basis of that contract, that the firm in upstate New York, Rensselaerville Institute, is being used for a variety of matters and purchase orders and other forms of contracting are just added to that contract. We can't go by the buddy system any more. That is not helping us. We can't go by the discretionary preferential contracting approach that has been law in the Defense Department since 1981. That's not helping us. That has resulted in only one contract under Buy-Indian since 1981. We can't leave the creation of employment in Indian Country to the standard employment programs that have been existent for many years, because they are being whittled away to nothing. The Council of Economic Advisors, using their deflators, have found that 68 percent of Federal Indian employment and training programs have been cut since 1981, and that's an extraordinary percentage, especially given the fact that we are the most unemployed population in the country.

The kind of initiative that will make a difference under Buy-Indian is one that will bring charges of Indians being the beneficiaries of a bail-out or a windfall, as was Chrysler, perhaps, as was New York, and any number of banking institutions, and any number of individuals who are not Indian. We would like this same kind of opportunity to have a bail-out, or a windfall, if you will. I prefer to think of it as reparation for the condition that we have been placed in as a national population.

One thing that would be possible is for the Federal agencies to select a place for a computer where all Federal procurement needs could be fed into that might possibly be taken advantage of by Indian businesses and tribal businesses.

The plastic fork making concession for the Department of Defense should not be something so mysterious that an Indian tribe or an Indian business could not undertake itself. On the basis of having a contract with the Defense Department, or any other Federal agency, it would be easy for that Indian entity to get a loan.

This kind of affirmative action is truly necessary if we are to make any difference at all in Indian country in this area. Certainly it should apply in BIA and be utilized, and the discretionary waiver of Buy-Indian should be done away with, or stringent requirements placed on it.

The National Park Service, for concessions adjacent to Indian lands, for example, should have preferential agreements for Indians to run those concessions and to have those businesses. It would be very interesting to see what would happen to the old boy system in BLM if there were Indian preference applied to grazing leases.

We think that the major initiative needs to be in the larger agencies, and particularly in the Department of Defense, and that if we have such an affirmative initiative that we will have to focus less on the issue of "fronting" or the possible abuses. I would urge the committee not to focus at the outset on this "fronting" matter and legislate for the potential abuse, but rather to write in provisions that would make it possible for Indian people and Indian groups and Indian tribes to go into business without the assistance of non-Indians.

Capital is the primary need. The National Congress of American Indians, NCAI fund has conducted a veterans outreach program focusing on business start-ups and job opportunities for the past year, and the two greatest obstacles that have been identified to starting businesses is lack of capital, and to Indian employment is lack of available jobs in Indian Country.

By creative application of the Buy-Indian Act, I think we could resolve these two problems—not totally, and it won't do everything—but it is a start. It would be a big start, and it would be a major commitment by the Federal agencies, which we think it's time they undertake.

Thank you very much.

[Prepared statement of Ms. Harjo appears in the appendix.]

The CHAIRMAN. Thank you very much, Ms. Harjo. I'd like to ask you a question and have the others on the panel address themselves to these questions.

First, your thoughts on the ownership percentage; and second, who will monitor or enforce the law? BIA? The tribes? Or what agency? Do you have any thoughts on that?

Ms. HARJO. A majority Indian ownership, I think, is the only way to go at the outset, and then to let experience dictate what needs to be done, if anything, to legislate for the potential abuse, or for the demonstrated abuse, perhaps a review of that matter, starting out with a 51-percent provision and then reviewing the matter within time certain.

The CHAIRMAN. Then 90 percent would be too high for you at this time?

Ms. HARJO. I believe so, just because many tribal and Indian businesses and people cannot get started on their own. I think it is necessary to write in a provisional review of this matter so that

people will know it's coming, and it can have a chilling effect on those who would be fronts, or those who would use Indians as fronts. As far as the enforcement mechanism, I think it has to be at the tribal level and in the Justice Department, rather than in the Bureau of Indian Affairs, because the Bureau of Indian Affairs has too long demonstrated its propensity for cash and poverty politics, and I think this would be an open invitation, if it had ultimate law enforcement duties.

The CHAIRMAN. Thank you very much.

Our next witness is Chairman Washakie.

STATEMENT OF JOHN WASHAKIE, CHAIRMAN, SHOSHONE TRIBAL COUNCIL, FORT WASHAKIE, WY, ACCOMPANIED BY SUSAN WILLIAMS, TRIBAL COUNCIL, AND GARY COLLINS, CHAIRMAN, ARAPAHO TRIBAL COUNCIL

Mr. WASHAKIE. Yes; my name is John Washakie. I'm chairman of the Shoshone Tribe, Wind River Indian Reservation in Wyoming. I would like to introduce another member of the tribe that also lives on the reservation, that's Gary Collins, who is the chairman of the Arapaho Tribe, and it's just an oversight that we didn't have him also on here, and he may want to talk if it is permissible.

I would like to thank this committee for sponsoring today's hearing and allowing me to testify before you about the concerns our tribe has regarding the proposed amendments to the Indian Financing Act and the Buy-Indian Act.

I've heard from the assistant secretary, Ross Swimmer, on the revolving fund, and I'd like to address that and break from my statement. The revolving fund, to the Shoshone Tribe, has meant nothing. We have been denied access to the revolving fund, revolving loan program because the tribe has a small loan program. As to who denied that, our word came from the area director.

The loan guaranteed an insurance program—we have applied for the loan guaranteed program at least 40 to 50 times, and to my knowledge we have never been accepted. The grant program is one that we are now looking out to apply for the $250,000 for either a meat packing plant or a hot springs development project that we have now under consideration for funding by another agency.

The only reason that I raise these is because the Indian Financing Act has been around since 1974, and it has been of no use to the Shoshone or Arapaho Tribes. Although I would like to comment on it. I would like to comment and say that we have had tremendous difficulty, as a tribe, and as members of tribes on an individual basis, trying to make loans through lending institutions where the guaranteed loan would apply. Our problem is that we live on trust property, and there's many complications there—jurisdictional and otherwise—that come into play.

However, we think that by allowing a third party to—it would make more money available. It would expand our possibilities if we could go to an individual or to another institution for that guarantee. The problems that we have had in the past is basically getting an acceptable application before the bureau. We have used some of their technical advisors on many occasions for the guaranteed loan program, and even those applications have failed to be funded. So,

the guaranteed program has really not been of much use to us. The real thing that we are trying to do in the area of reducing tribal unemployment is the TERO office that you've heard about already from Conrad Edwards. Our TERO office is very active. It does everything from setting up the organization and giving our tribal contractors a place to meet, to going out and enforcing tribal preference on all contracts or all jobs within the exterior boundaries of the Wind River Indian Reservation.

It has been quite successful. We have had some problems, and our biggest problems are probably with HUD housing with HUD. We hope that we have straightened these out, but I'm not certain about that.

To say that the BIA financing program has been of benefit to our tribe—it's not.

I'd like to state on a question that was asked on the percentage of ownership, because it's on my mind right now, the question on ownership—we have a TERO office that enforces that regulation to the business council. They have to be certified. Our requirement is 85 percent Indian owned, no matter where they are at, on or off the reservation. The reason that we did that is because we wanted to eliminate fronts. At 51 percent we found, locally, that there were too many fronts. I realize that this conflicts with the Indian preference that's applied under HUD housing contracts, but it's the only exception that we have on the reservation because we do need housing, and housing does offer employment.

The remainder of my testimony concerns the amendment to the Buy-Indian Act. The President, in 1983 Indian policy statement, professed that this administration would work to create a more favorable environment for the development of health reservation economies and remove the impediments to economic development and encourage cooperative efforts among the tribes, the Federal Government, and the private sector in developing reservation economies by removing barriers restricting tribal contracts, and reducing regulations hindering economic growth.

The Shoshone Tribe believes that the proposed amendments to the Buy-Indian Act will help spur the economic growth of our reservation and allow us to reduce the tremendous unemployment, which hinders our economic development.

The reason that we are interested in the Buy-Indian contracts is for a number of reasons. We are interested in developing a meat packing plant and utilizing a resource that is readily available to us locally. Many of our tribal members, and the Arapaho Tribe, raise cattle, and that's one of the areas that we hope to take advantage of and supply chopped meat to the Army, or to government schools, or whomever, that would like chopped meat. [Laughter.]

The other parts of my testimony will be submitted, and it is in written form. I think I'll just conclude it there, and if you have any questions, I'll try to answer them.

[Prepared statement of Mr. Washakie appears in the appendix.]

The CHAIRMAN. Chief Washakie, your observations on the revolving fund are very valid ones, I believe. I think that it was a matter of oversight on our part not to incorporate that in the bill, so I am asking the staff to make certain that the revolving fund will mean something to your organization, because at the present time, since

you have your lending program, you do not qualify. We will make a change to that. Mr. Washakie. Thank you.

I think that it makes good sense. These hearings mean something to us.

Mr. WASHAKIE. I've tried to leave a little time for Mr. Collins to talk. Is that acceptable?

The CHAIRMAN. Yes; go right ahead.

Mr. COLLINS. Thank you, Senator. For the record, my name is Gary Collins, chairman of the Northern Arapaho Tribe in the Wind River Indian Reservation in Wyoming.

Although I don't have any prepared statements, they do very similarly track what Mr. Washakie had just outlined for you.

But basically what I see in Indian country with our regard, to provide a reservation economy, is the opportunity for those particular Indian individuals to promote a business of some sort to generate jobs and so forth.

The stumbling block here that has been outlined all afternoon is the fact of financing availability to capital. We don't seem to be able to get a fair shake with regards to the lending institutions—and I'm not talking particularly preference—I'm just talking those who seem to be qualified, but because of the trust status of our lands and our position, the collateral is lacking in views of the lending institutions.

So the bottom line is, we are very much—we have several tribal members, as well as tribes, interested in providing some opportunities for employment, for betterment of the community, and so forth, but we just can't seem to make that stride through with regards to the capital requirement.

On our particular reservation, although it is blessed with many natural resources, we definitely need those kinds of dollars to pull through the implementation stage to develop the resources into a vital economy.

Currently, with the local schools, the Bureau of Indian Affairs, the tribes, and the tribal people, something on the order of $40 to $50 million is generated annually as disposable income, and certainly a very minimum amount of those dollars are utilized in Indian businesses.

So the opportunities are there. There are dollars there to use in terms of a reservation economy with cash flow and development of jobs, and so forth. But it just does not occur.

We've considered creating our own bank, our own lending institution, but this is somewhat arduous. We haven't chosen the right angle yet, but we are looking into this, to solve our own problems internally. But certainly, there again, capital requirements are a stumbling block.

As far as the comments that you had suggested to earlier that we might address with regards to Indian ownership and enforcement, like Mr. Washakie had mentioned, the tribes, collectively, have gone on record of having an 85-percent ownership with regards to Indian companies on our reservation, with the exception of some HUD contracts. We also have taken the strides through the TERO office, our Tribal Employment Rights Office, to do the compliance and the enforcement of these. It's been very difficult, I believe, but, finally, those people who do the work on our reservation, particu-

larly in the area of housing and oil and gas, have recognized the fact that we do mean business with regards to Indian employment.

So even though 51 percent is technically known as Indian-owned, minority-owned, we still abide by the 85-percent rule. But with regards to employment, we feel that 100 percent, and then we work backwards from there. And the key to this is the compliance enforcement on the local level. We certainly feel that the BIA would not be able to be as strong in this area of enforcement of employment, so that's why we've taken that task to certainly address the employment issue and the enforcement of that.

The CHAIRMAN. On your 85 ownership requirement, would it not suffice to have your TERO organization monitor and enforce the provision? If it's a front organization, can't you just take them off the list?

Mr. WASHAKIE. Yes; when we find out, we do. We eliminate them.

The CHAIRMAN. So is it necessary to go as high as 85 percent? Would 60 percent be just as well?

Mr. WASHAKIE. I will admit that 85 percent was just picked out of the air, but it seemed to have worked for us for the past 3 years.

The CHAIRMAN. I see.

Mr. COLLINS. Senator?

The CHAIRMAN. Before calling on the vice chairman of the Navajo Nation, I'd like to have the record note that you are accompanied by Ms. Susan Williams, your counsel.

Ms. WILLIAMS. Mr. Chairman, if I may, I have a couple of comments I would like to add.

I, too, was involved in the early effort on the part of several tribes to have the Buy-Indian Act incorporated in the defense appropriations bill, and assisted the first Indian tribe, that is the Pueblo of Laguna, in obtaining a Defense contract under the new memorandum of understanding executed between the Small Business Administration and Defense.

Like some of the earlier witnesses, I think there are tremendous deficiencies in the current Buy-Indian or procurement laws as they relate to Indian tribes and Indian businesses in according preferences to the businesses.

I think that, in general, the concept of expanding the Buy-Indian Act to other agencies in the Government is a very good one. It opens up doors to procurement in other agencies that we simply cannot pound down without the authority of Congress to permit us to do that.

The execution of the Buy-Indian Act, however, is a critical concern. The experience we've had at Defense is that you really have to force these agencies to procure with the discretionary authority given to them by the Buy-Indian Act.

At the Interior Department, I think some of the earlier witnesses pointed out that there's not very much of a commitment there to implement vigorously the Buy-Indian Act procurement authority that Interior has.

There are numerous proposals on the table to execute and to provide some teeth in the Buy-Indian Act. Some of these proposals seem more attractive than others, at least to the Wind River Tribes.

I would suggest that the committee give careful consideration to the various ways in which the Buy-Indian Act might be given more teeth. There is the notion of using models available to the blind and the handicapped, mandatory procurement lists—that may make some sense. There's the notion of absolute set-asides: how much, exactly how they would be set aside. These are all, I think, questions that need to be thought out very carefully.

It may make some sense for the committee, in light of all of these various options, to find out exactly what the procurement practices are, and the history is, at the various Federal departments. For example, at the Interior Department—I think it would be helpful to know what the procurement history is at the Interior Department under the Buy Indian Act.

There needs to be, I think, numerous very hard questions answered by the Bureau of Indian Affairs [BIA]. For example: under what circumstances will they waive the Buy-Indian Act? What are the reasons compelling that? I think we need to know what's wrong with these agencies before we decide, exactly, what the fix is, knowing full well that there needs to be expanded Buy-Indian Act authority, and there needs to be some kind of mandatory requirement for these agencies to use the Buy-Indian Act.

Precisely what that is, I think we need to be very careful about in designing, and need some additional information, perhaps a task force mandated by Congress, with a relatively short fuse—6 months to 1 year—to go and look at what Interior has done on the Buy-Indian procurement, will be helpful to the committee in deciding which approach is most desirable in light of the shortcomings at Interior. Thank you.

The CHAIRMAN. Ms. Williams, it may interest you to know that at this moment a letter of inquiry is being prepared to be sent to the Interior Department, and more specifically to the BIA, inquiring first, as to their employment practices, because I have received reports that only 30 percent of their employment slots are filled by Indians. Incidentally, this committee is 70 percent Indian staffed. I would like to know in what job categories and in what percentages are Indians and non-Indians represented, and we are asking them about their procurement practices and policies—not just dollar figures, but, as you have indicated, under what circumstances certain waivers are made.

So, we should be receiving some response within the month.

Ms. WILLIAMS. Very good. Thank you.

The CHAIRMAN. Our next witness is the Honorable Johnny Thompson, the vice chairman of the Navajo Nation, Window Rock, AZ.

Mr. Vice Chairman.

STATEMENT OF JOHNNY R. THOMPSON, VICE CHAIRMAN, NAVAJO NATION, WINDOW ROCK, AZ

Mr. THOMPSON. Thank you Chairman Inouye. You know, as I walked into this hearing room this afternoon, I find it a little less homely. As you recall, Chairman McDonald and I had proposed that we would put some rugs up in this hearing room, simply practicing the Buy-Indian Act here. [Laughter.]

The CHAIRMAN. We have incidentally, if it is of interest to you, the Navajo Nation has taken this panel, they will provide us with a $50,000 rug. [Laughter.]

And in that corner we will receive a huge totem from Alaska, courtesy of the museum in New York, and it's now being packed and crated to be shipped here.

And in these other panels we will have artwork representing the various regions of Indian country. So, this will be your room, and I think everyone coming in here will realize that this is an Indian committee room. But we're looking forward to receiving your rug, sir. When can we get it? When do we get it? [Laughter.]

Mr. THOMPSON. We'll talk about that, Mr. Chairman. [Laughter.]

The CHAIRMAN. Well, as we say, we want action. [Laughter.]

Mr. THOMPSON. That we'll have.

Chairman Inouye, I want to thank you for allowing me to testify. For the record, I'm also submitting a statement on this most important issue.

I would also like to thank you, on behalf of the Navajo Nation, and our people, for your focus on economic development during this 100th Congress. All Indian people need for you to be successful.

In that regard, one of the issues before us today, the Buy-Indian Act, and other such legislation pending before your committee—for example S. 788, the proposed Indian Economic Development Act, and S. 721, the proposed Indian Development Finance Corporation Act, need to be passed as expeditiously as possible.

The Buy-Indian Act was originally passed in 1910 to assist in the development of tribally owned enterprises, and to assist in the development of a self-sustaining local private sector that would aid in tribal development. Currently both the Bureau of Indian Affairs and the Indian Health Service are encouraged to award contracts to qualified Indian contractors to the maximum extent possible.

The Navajo Nation believes Indians should be treated preferentially in the awarding of contracts and subcontracts that the government enters into. Such a belief is totally consistent with the Federal trust responsibility of providing for education, health, and welfare of all native Americans.

It is also consistent with the Navajo Nation's top priority, the creation of a thriving private sector—a private sector of economy on our reservation. In order to secure the necessary start-up capital, especially in the reservation environment, which is still an uncertain one to many outside investors, it helps a great deal if a tribal entrepreneur can point to a secure initial source of demand as the foundation for the business.

This is a key benefit the Buy-Indian Act gives us. Just as your proposed Indian Development Finance Corporation would provide the seed capital for the business start-up, the Buy-Indian Act truly provides the seed market upon which a talented, energetic Indian businessperson can build successfully.

I would like, however, to recommend several changes in the Federal contracting and procurement laws which, if implemented, would greatly assist tribally-owned enterprises and provide many more jobs to our Indian people.

Under current law, different agencies, such as the BIA, the Defense Department, and Small Business Administration, 8(a) operate their procurement and set-aside programs differently. I believe that certain definitional inconsistencies between the SBA section 8(a) minority enterprise program and the Buy-Indian program should be resolved in order to have both programs reach their full potential for the Indian people.

The first issue involves the definition of "disadvantage." An SBA 8(a) certified firm must be owned by socially and economically disadvantaged individuals, generally. I believe that in the case of Indian people, social disadvantage is presumed, but economic disadvantage is not. No such showing need be made by Indian business owners seeking certification as an Indian/Alaskan Native enterprise eligible for the Buy-Indian set-asides.

A second issue relates to the degree of Indian ownership and control. An 8(a) firm must be at least 51 percent owned and managed on a day-to-day basis by one or more disadvantaged individuals. In contrast, a Buy-Indian certified contractor must be 100 percent Indian owned and controlled. An Indian subcontractor eligible for preferential treatment under Public Law 93-638 contracts may be 51 percent Indian owned, but need not be 8(a) certified.

A major substantive drawback to the 8(a) process is it requires showing of economic disadvantage by the Indian individuals owning and managing the applicant firm. This is ironic, given that some 100 percent Indian owned firms certified and listed on the BIA Buy-Indian roster are still not automatically eligible to participate in the Department of Defense contracts.

The Department of Defense's own Buy-Indian initiative, which has as an additional condition of eligibility that they be an 8(a) certified.

These definitional inconsistencies pose a major hurdle to the businesses attempting to participate throughout Federal procurement process.

We believe that careful thought should be given to creating a single certification process to Indian businesses. This government-wide standard ought to be written to reflect not only ownership and/or control as the determinates of eligibility, but the extent to which the firm actually benefits, and the economic circumstances of the collective grouping of Indian people—that's a relative concern that would include how many Indians the firm employs, whether its operations are based on a reservation or in another Indian community, and to what extent the firm's gross revenues and net profits will serve to generate additional economic activity on that reservation or within that community.

The Navajo preference laws focus a great deal on such criteria. Under such a formula the SBA requirement of 8(a) certification of ownership by economically disadvantaged individuals would be preempted, as would the Buy-Indian ownership requirement. So would the requirement of management by economically disadvantaged persons, freeing us to seek the very best talent possible for the job.

As mentioned before——

The CHAIRMAN. Your observations on the inconsistencies between the Buy-Indian and section 8(a) SBA I think make good sense. I will instruct the staff to look into this matter, with the pos-

sibility of drafting appropriate legislation to reflect your recommendation, and amend SBA Section 8(a) on the presumption of economic disadvantage.

Mr. THOMPSON. Thank you.

The CHAIRMAN. It makes good sense. Please proceed.

Mr. THOMPSON. Mr. Chairman, as I mentioned before, such preferential status in awarding contracts only applies to BIA and IHS because these contracts primarily assist the Indian people; however, there are many other agencies, such as the Department of Defense, which can and should provide preferential status for Indians in awarding of contracts and, most importantly, subcontracts.

Most every year Congress inserts language into the Department of Defense appropriation bill. Since fiscal year 1983 Congress has included language that states,

> So far as may be practical, Indian labor shall be employed and purchases of the products of Indian industry may be made in the open market at the discretion of the Secretary of Defense.

Given that the Department awards $12 million contracts a year valued at $120 billion, such language should be inserted into an authorization bill so that it is permanent.

The Navajo Nation has great experience in Defense contracting. General Dynamics, one of the country's largest prime contractors, has been on the reservation for 25 years, and has expanded its operation recently. We would, obviously, like to do more Defense contracting and subcontracting, and permanent Department of Defense preference might give us that opportunity.

Other agencies, such as the Bureau of Reclamation and the National Park Service also execute many contracts in the proximity of Indian reservations. Many times Indians are not considered in awarding of such contracts. The secretary should have the authority to direct these contracts to the Indian firms.

The criteria for awarding such contracts should be changed so that the provisions state that Indians should be awarded contracts whose products are beneficial to Indians.

This is an amendment to one that allows Indians to participate in contracts or subcontracts they could benefit from economically.

The CHAIRMAN. May I interrupt at this point? You have noted that since fiscal year 1983 Congress has included in the DOD appropriations bill that language on employment of Indian labor. Ms. Williams, I believe you worked on this, didn't you? This does not appear in the authorization measure? It's not part of the law of the land?

Ms. WILLIAMS. There was a great deal of research done at that time on whether including that rider, the Buy-Indian Act rider, in an appropriations bill in 1 year would make it permanent. The law is conflicting on this. Ideally, the solution would be to put the Buy-Indian Act in an authorization bill.

The CHAIRMAN. It is not in there now?

Ms. WILLIAMS. It is not now. It is only in the appropriations bill, just as the Buy-Indian Act is in appropriations bill at Interior.

The CHAIRMAN. This committee will draft an appropriate amendment to the DOD bill right now. Please proceed.

Mr. THOMPSON. Mr. Chairman, I do not want the members of this committee to believe that preferential status should be granted without Indian firms competing in the marketplace. Obviously, there must be a ceiling on the cost allowances for Indians. This may be done in either of two ways. We feel that, given our stage of development and current needs, 10 percent above the estimated competitive costs of a contract would be a reasonable amount Congress should be willing to condone for contracts registered under the Buy-Indian Act. This 10 percent would compensate for the higher prices that Indian enterprises pay for as compensation required for finished goods because of a geographic isolation of the reservation, which lessens our access to certain goods, and our present inability to exploit economies of scale that other entities have developed over the years.

Another method of establishing competition would be for the contracting entity to establish a ceiling price in the execution of the contract, and then to open it up for bid to firms certified to compete for such contracts. The Navajo Nation currently utilizes such an approach.

An entity within the Small Business Administration should be formed to provide assistance to Indians and tribally-owned enterprises. Such a division would be in a position to provide central coordination of SBA programs, such as its 8(a) program, with delegations to each region. The division would also be a major source of technical assistance to tribal businesses, and could provide them with a base of guidance and expertise tailored to Indians' unique status and needs. In addition, such a division would help to assure that tribal and Indian businesses achieve appropriate priority within the Federal Government, and could assist in addressing the procurement problems previously described.

I feel that a common problem for Indians trying to take advantage of procurement and contracting opportunities is the inability of Indian business to gather timely procurement intelligence—what contracts are to be offered? And how do you compete with others with more expertise?

As the 8(a) process is still new to many Indian businesses, there is a need for an outreach program with the procurement process to inform Indian businesses of such opportunities. Such a program needs to be incorporated in all agencies that do contracting, and should be institutionalized within the procurement processes.

The Federal Government should work with the tribe to ensure that the letting of a procurement contract is consistent with specific tribal preferences. For example, the Navajo Nation has its own Navajo preference law. We believe that if a contract will have an impact on our reservation economy, it should be awarded to the Navajo firm to benefit Navajo people. I'm sure that many other Indian tribes have similar concerns.

Mr. Chairman, I believe these changes are needed to improve the contracting and subcontracting opportunities for tribal entrepreneurs and small businesses. Obviously, the most important changes are to broaden the contracting opportunities from BIA and IHS to all agencies, and to standardize the various eligibility requirements of the existing programs. Again, Mr. Chairman, I want to thank you very much for this opportunity to appear before you, and once

again for placing these and other economic issues so high on your committee's agenda. I will be very pleased to answer any of your questions.

Thank you.

[Prepared Statement of Mr. Thompson appears in the appendix.]

The CHAIRMAN. I am interested, Mr. Vice Chairman, on the Navajo preference law. Does this mean that if a Shoshone company wanted to do business in your reservation, they would have some difficulty?

Mr. THOMPSON. They will be given a consideration, Mr. Chairman, but for economic reasons, we encourage our local Navajos to get preference on particular projects. Yes; other Indians are welcome to our reservation to contract for these jobs.

The CHAIRMAN. How do the Shoshones treat the Navajos?

Mr. WASHAKIE. We have a local preference that's similar to what he's telling you. And the way that it works is we give preference to the firms that are located on the reservation if the job is on the Wind River Reservation.

The CHAIRMAN. A Shoshone company, in other words?

Mr. WASHAKIE. A local one. We don't discriminate—it's local, meaning it's on the reservation, and is a part of our economy, and contributes to the overall economic environment.

The CHAIRMAN. Well, I hope someday our Indian brothers and sisters will be hiring Indian brothers and sisters, whether they be Shoshone, Navajo, or Hopi, but I suppose first things first.

I thank all of you. You have been most helpful.

As you have noted, we have already made amendments to all amendments, and I think that your suggestions will make this a better bill.

I thank you very much.

By inadvertence we left out one of the witnesses on the agenda, and so our final witness this day will be Dr. Fredrick C. Cooper.

STATEMENT OF FREDRICK C. COOPER, COOPER CONSULTANTS, INC.

Mr. COOPER. Mr. Chairman, members of the committee, thank you for permitting me to speak to you today at this hearing especially since today is my birthday.

The CHAIRMAN. Happy birthday.

Mr. COOPER. Thank you. This is my first opportunity to present testimony to a Senate committee. I have prepared my statement in written form, and you have that.

The CHAIRMAN. Your prepared statement will be inserted immediately following your oral presentation.

Mr. COOPER. Thank you.

My name is Fredrick C. Cooper. I am an enrolled member of the Shoalwater Bay Indian Tribe in the State of Washington, and I've owned my own professional service company since 1976. I want to speak today to the aspect of Buy-Indian contracting and Indian preference in subcontracting employment from that perspective.

My business is involved in many of the Federal programs to which these rules and procedures are applicable and used. I've worked on over 150 Indian reservations, rancherias, reserv[illegible], and

for Alaska Native corporations. My firm also does work in the private sector and for other Federal agencies, such as DOD.

As I said, I will be speaking to the perspective that covers direct procurement of professional services, and this applies to the Bureau of Indian Affairs, Health and Human Services, and to related employment and subcontracting by recipients of Federal funds, such as the Department of Education, Housing and Urban Development.

I've been working in the program since 1982, so it basically covers the period to which the Buy-Indian rules and procedures have been in effect for both the BIA and the Indian Health Service.

By and large I think these rules and regulations are good. They are reasonably broad in proper application, but there are, as other people have said today, inconsistencies in their use by contracting officers. These occur on a regular basis. I would like to point some of these out in my testimony.

The problem with these inconsistencies is that they do create economic hardships, particularly for start-ups of Indian businesses. I think they also reflect poorly on the intent of the act.

There are four points that I'd like to make: The first is waivers and exceptions to the act's provisions. They simply are granted, I think, without sufficient documentation. I realize that this is often a deficiency on the part of a contracting officer, or an inefficiency for him to be able to followup and carefully research a particular procurement, but too many times waivers are granted.

Second, Indian preference subcontracting provisions for the utilization of Indian/Alaska Native enterprises have not been widely enforced or monitored.

Third, the intent of enabling legislation to assist in the development of firms, I think, are outdated and incompatible with present-day business practices, and I speak specifically to the percent of ownership.

Last I think that the Buy-Indian contracting has been circumvented in certain programs—I speak to this from personal knowledge—and that is from transfer of funds between Federal agencies, even when appropriations were made for Indian programs involving trust responsibility for the Department of Interior. The key words here, I think, are "trust responsibility," as vice chairman Johnny Thompson of the Navajo Nation also indicated.

The CHAIRMAN. I will ask you to hold your testimony for just a few minutes. There is a vote in the Senate and we will recess until I return.

[Recess.]

The CHAIRMAN. Let's proceed.

Mr. COOPER. Thank you. Prior to the adjournment I mentioned four notable deficiencies to the Buy-Indian Act, and I will get into some specifics of these as to how they apply to, or have occurred, in different agencies.

First, in the Bureau of Indian Affairs, I would note that professional services are frequently sought by area offices, by facilities engineering or part of the central office, the central office here in DC, and the Division of Transportation. They utilize rules which were initially published in 1982 on October 8. These were never issued as final rules. I understand that the administration or the

staff at BIA is considering drafts of new rules, but they have, as yet, not been published. I would urge that your committee urge BIA to publish and enact new rules at the earliest possible date.

Their current rules are centered around 100 percent owned firms, and—but the problem with it is that far too often the contract determents are subjected to waivers, either whether to do it on non-availability, or competition that they feel just isn't out there, or whether it's technical quality, inability to deliver, or just they feel that the contract acquisition cost would be unreasonable. And I think that's to no fault of their own other than, you know, just a lack of knowledge. Indian businesses are continuing to improve, gain additional capabilities, and BIA just isn't simply keeping up with this in their procurement activities.

The BIA's Division of Transportation, I think, has an excellent record of utilizing the proposed rules for seeking awards to Indian firms. In fiscal year 1986 they contracted with Indian businesses for professional services amount to over $2 million. This is out of their total appropriation for roads on reservations of $98 million for that fiscal year. This is only about one-third, though, of the cost of professional services which they incurred. The remainder was accomplished by Federal employees.

When area engineers within the BIA cannot deliver a project, they often seek help from the Federal Highway Administration. This is one example of where moneys which have been allocated or appropriated for trust responsibility have gone to other agencies and have not involved, in any way, shape, or form, Indian businesses.

One example was in 1985, the Western Bridge Division of the Federal Highway Administration designed two bridges on the San Carlos Indian Reservation for the Phoenix Area Office. When the contracting officer determined that two Indian firms were non-competitive due to cost, the Western Bridge Division ultimately ended up spending equal, or maybe slightly more, than the cost of what it would have been done to have it done by one of the Indian businesses.

There's no evidence that Federal Highway Administration has also sought Indian firms when they subcontract work such as surveying or mapping.

A number of the areas offices, and I will refer particularly to the Albuquerque area offices, have allowed small businesses to compete with non-Indian business to compete with Buy-Indian firms, particularly in the areas of water resource planning, irrigation, engineering, and water rights investigations.

There was an example recently in regard to the Pueblo Laguna and Pueblo Acoma, 1986, where they were procuring—BIA was procuring services for water rights investigations, there was an appeal lodged in this solicitation, the award was given to a small non-Indian firm, and it was found by the area solicitor that such negotiations should have taken place first with one or more of the qualified Indian firms that also solicited the job.

What's unfortunate about this, even though they have now backed up in allowing the Indian firms to submit best and final offer, is the length of time that it has taken in this particular pro-

curement. The tribe has lost over 8 months in having the Justice Department pursue some of their water rights concerns.

This, again, I think is a case where there has been modifications to the Buy-Indian Act, interpretations by the BIA, and that they should be discouraged as that they, in fact, stymie the development of capabilities within Indian businesses.

BIA also appropriates substantial funds—has appropriated substantial funds for water rights investigations and, frequently, these are transferred to the Justice Department. There's no evidence that the Justice Department has ever sought the use of a qualified Indian firm when there's been—even the fact there's been a transfer of this trust responsibility.

Also, with the Bureau of Reclamation, as other people have testified, there have been transfer of funds that have been in the BIA appropriation, and there's no knowledge that those funds have been utilized in contracting with Indian businesses.

For example, the Bureau of Reclamation is doing planning work for one of the Arizona tribes in regard to central Arizona project waters, they're doing master planning and, to my knowledge, they're not using any Indian businesses in that work.

The facilities engineering staff, another one of the BIA agencies, does have a very thorough program. They've established programs for monitoring 100 percent Indian owned businesses, 51 percent Indian owned businesses when use of subcontractors—they ask that contractors provide documentation of the solicitation stage that they will utilize Indian firms in their subcontracting.

However, they do lack followup capability—just have too many contracts to monitor, and particularly when contracts end up going through the Public Law 93-638 process, there's just no followup to see that Indian firms are being utilized as subcontractors. A recent award of a contract at St. Francis School District on the Rosebud Reservation was by this method. A non-Indian architect was selected, but there's no evidence that subcontracts were solicited that were Indian firms. So there we have one-half of a million dollar contract that is not benefiting Indian enterprises on reservation or off reservation to any extent.

With the Indian Health Service we have quite a different story. I think——

The CHAIRMAN. On this Rosebud situation——

Mr. COOPER. Yes, sir?

The CHAIRMAN. When did Indian architects realize that this design for a new school was being solicited?

Mr. COOPER. It was published in the CBD, sir. There were several Indian firms considered, but the award was made to a non-Indian firm.

My point, also, is that non-Indian firm did not hire any Indian subcontractors.

The CHAIRMAN. On what grounds? That they were not qualified?

Mr. COOPER. As far as the selection process?

The CHAIRMAN. Yes.

Mr. COOPER. I—well, I'm not the school district, so I can't speak to, you know, what their——

The CHAIRMAN. But Indian architectural firms were considered?

Mr. COOPER. Yes, sir; because they have designed other schools of similar size.

In the Indian Health Service they've had similar rules enacted since 1983. To the best of my knowledge the Indian Health Service has not awarded any contracts to other than Indian firms since that date. A very excellent record of procurement.

Non-Indian firms were used frequently on hospital and clinic design prior to 1983, and I believe that there have been less problems, both in procurement and in the quality of the work, since that date. For example, two recent projects, the Sacaton Hospital in Arizona and the Rosebud Hospital in South Dakota, for which there's a groundbreaking tomorrow—both those projects came in substantially underbid, approximately 20 percent underbid, and they were both designed by Indian architects.

Probably the worst offender, I think, of Indian subcontracting is moneys which come through the Department of Education, their 815 school program. There's really very little effort there to assure that there is Indian preference both in employment or subcontracting on their efforts. Through recent projects, a school in Harlem, MT and another one in Taholah, WA, both went to non-Indian firms and had no Indian subcontractors involved in those projects.

In the HUD housing program we do have Indian preference, of course. I'd like to point out that in professional services their 2,000 units a year of housing, approximately, equates to about $6 million in AE services. My tallies show that about 80 percent of this design work has gone to Indian firms in recent years. However, if you count work that has to be subcontracted, this percentage would drop to about 50 percent, and I think that new rules that they have promulgated and published will see this percentage further dropped, because now Indian firms must compete openly with non-Indian firms, and be just given just one factor in the solicitation or the ratings for consideration of preference.

Some comments on the future of Indian preference. I think that the program can be dealt with in a number of ways to strengthen the weaknesses. First, the contracting officers must consistently require Buy-Indian contracting and Indian preference in employment and subcontracting. To allow waivers due to a lack of qualified firms or competition is to admit defeat of the program. Only through adequate volume of work will Indian economic enterprises be formed or be encouraged to grow and increase their capabilities.

I am not referring to just the Federal marketplace, you know. The program obviously—even with my own—it helped my firm get a start, and give us a base to also compete in other markets.

Second, there is a substantial market for Indian firms in subcontracting. This is where firms get the best opportunities as new businesses. They can learn from the prime contractor, and it also encourages any overall program for diversity and available services.

The third area where substantial gains could be made is in the availability of contracting opportunities through the programs where funds are transferred to other agencies—either within the Department of the Interior or outside the Department of Interior.

I refer specifically to programs where funds might be spent in the Department of Justice, the Bureau of Reclamation, and the Federal Highway Administration, and I think that there should be

some rules and procedures that are either attached to the transfer of those funds that they must enforce and use the Buy-Indian Act, or they should promulgate their own rules for procurement.

My last point that I'd like to make is on Indian ownership. I feel it is important to have consistent rules within the Government for procurement of tribally-owned and Indian businesses, and that the retention of the 100-percent Indian ownership rule is no longer consistent with other programs, that it should be revised to have the same language as the Indian Finance Act, and I support 51 percent as offering the most flexibility. My firm is 100 percent, by the way, but the problem is there should be no restrictions geographically, and that 100 percent criteria is really unworkable for professional services.

We generally have to be located in urban areas, particularly if we are going to take advantage of other open market procurement.

Generally, in summary, I feel that there needs to be further efforts to reduce waivers, and that we should revise the act to permit 51 percent Indian ownership to be consistent with other legislation.

Thank you.

[Prepared statement of Mr. Cooper appears in the appendix.]

The CHAIRMAN. Dr. Cooper, I thank you very much. Your testimony will be extremely helpful. I have instructed my staff to send a letter of inquiry to the Bureau of Indian Affairs to look into the status of the rules at this moment, and to find out why final rules were not issued.

Second, we'll be inquiring into the St. Francis School District on the Rosebud Reservation to find out why Indian architectural firms were not awarded the contract.

We will also inquire into the procurement practices and the employment practices of the Indian Health Service, and we'll find out what they're doing, especially if they have the word "indian" before the word "health"—it should make some difference.

We'll most certainly be looking into DOE's 815 funding on reservation schools, and we will give you copies of these letters of inquiry. We will also send you the answers, which I am certain will be forthcoming.

Mr. COOPER. Thank you very much, sir. I think——

The CHAIRMAN. So I can assure you that your testimony has been extremely helpful, and we are very grateful to you for traveling this long distance to be with us today.

Mr. COOPER. Again, thank you.

The CHAIRMAN. The record will be kept open for another week to permit all of you to submit addenda or amendments or other statements. With that, I thank all of you for participating.

The hearing is adjourned.

[Whereupon, at 4:53 p.m., the committee adjourned subject to the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

PREPARED STATEMENT OF ROSS O. SWIMMER

Mr. Chairman and members of the Committee, I am pleased to have this opportunity to discuss Indian economic development issues, including certain proposed amendments to the Indian Financing Act of 1974, and potential clarifying legislation relating to procurement from Indians, including Indian enterprises and other Indian entities such as defined in laws codified in 25 U.S.C. 450b and 1452.

AMENDING THE I.F.A.

I will begin by addressing the two proposed amendments to the Indian Financing Act sent to us with your April 15 letter inviting us to testify at this hearing. The first amendment would amend section 205 (25 U.S.C. 1485) of the Act to provide that a loan guaranteed under the Act, including security given for the loan, may be sold or assigned by the lender to any "person". As you know, under section 1 of title 1, U.S. Code, the term "person" as used in Acts of Congress includes "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals".

Section 205 now limits the sale or assignment of guaranteed to "financial institutions" regulated by a government. This limitation on use of existing secondary market sources effectively impedes access by tribes to financing. We note that the restriction is not consistent with the provision in section 208 (25 U.S.C. 1488) of the Act which permits a guaranteed loan to be made "by any lender satisfactory to the Secretary", thereby authorizing a primary market broader than the authorized secondary market.

A possible problem in the sale of guaranteed loans in the secondary market is the servicing of the loan. However, we would expect the original lender to be responsible for the servicing.

The second amendment to the Indian Financing Act would amend section 217 (25 U.S.C. 1497) to increase the limit on the aggregate amount of loans which may be insured or guaranteed under the Act from $200 million to $500 million. Under present conditions requiring the control and reduction of Federal budget deficits, it is not possible for us to support this amendment. However, we would be pleased to work with the Committee on an analysis of the program's activity levels and a forecast for the next few years to determine when an increase will be needed and the amount of the increase reasonably needed to carry the program for three years.

We understand that this Committee may explore other possible amendments to the Indian Financing Act. We are informed that these amendments might include:

(1) Authorizing the sale of direct loans made under the Act and use of the proceeds to replenish the revolving direct loan fund in the same way that repayments of direct loans replenish the fund;

(2) Authorizing the payment of guaranteed loan default claims under section 211 (25 U.S.C. 1491) in advance of appropriations to increase the value of the guarantee to prospective lenders;

(3) Authorize grants made under title IV of the Act (25 U.S.C. 1521-1524) to be used for "private paid-in capital and paid-in surplus" under the Small Business Act;

(4) Authorizing use of the Loan Guarantee and Insurance Fund to cover performance bonds, asset risk insurance, and Indian Tax Status Act bonds under certain low-risk criteria; and

(5) Modification of the "on or near reservations" restriction on grants in section 401 (25 U.S.C. 1521).

The final Administration positions on amendments such as the foregoing must await further study should the Committee wish a report based on them or on an introduced bill incorporating such proposals.

FEDERAL PROCUREMENT FROM INDIANS

The Federal marketplace has been a realistic opportunity for non-Indian minorities, particularly in urban areas, but it has not provided the kind of opportunities it could for meaningfully reducing poverty among Indian people. The President's Commission on Indian Reservation Economies found that "government contracting and procurement policies, regulations, and procedures are a significant obstacle to Indian reservation economic development."

I understand that in line with the 1983 Memorandum of Agreement between the Small Business Administration and the Department of Defense to certify 75 new businesses, the DOD during FY 1986 awarded 150 contracts to Indian owned businesses utilizing the SBA's 8(a) authority. Moreover, DOD advises that Indian-owned businesses received some $288.7 million in both competitive and 8(a) contracts valued at $25,000 or more during FY 1986 compared to some $165.7 million in FY 1985.

However, notwithstanding the increase in DOD contracting with Indian owned enterprises as discussed above, it is my view that more could be done to increase participation by Indian enterprises in general minority procurement programs and that existing procedures to facilitate Federal procurement from Indian enterprises should be strengthened.

President Reagan's 1983 statement on American Indian Policy discussed the need for the development of Indian reservation economies and he announced his intention to establish a Commission on Indian Reservation Economies to "identify obstacles to economic growth in the public and private sector at

all levels [and] examine and recommend changes in federal law, regulations and procedures to remove such obstacles ***". The Commission's 1984 Report and Recommendations to the President and the 1986 Report of the Department of the Interior's Task Force on Indian Economic Development identified major barriers to Indian economic development including inadequate subcontracting under Government contracts, exclusion of Indian "tribes" as eligible entities, exclusion of tribal enterprises not chartered under state laws, inconsistency among Federal procurement regulations, cumbersome bidding procedures, inadequate technical assistance, and poor loan servicing and monitoring.

Based on those findings, we are exploring within the Department and the Administration the possibility of proposing amendments to the Indian Self-Determination and Education Assistance Act to expand the "Buy Indian" and Indian preference provisions now appearing in Section 7(b) (25 U.S.C. 450e(b)) of that Act. Of course, any legislative recommendations would be after appropriate clearances within the Administration.

AMENDING THE BUY-INDIAN ACT AND SECTION 7 OF P.L. 93-638

With regard to expanding "Buy Indian" authorization by amending P.L. 93-638, the Indian Self-Determination Act and Education Assistance Act, building upon section 7(b) of that Act could be viewed as a logical place to start. Section 7(b) gives Indians preference in employment under contracts awarded by the Government which are for the benefit of Indians. It also gives Indians preference in the award of subcontracts under such programs. New subsections could extend authority similar to that under the "Buy Indian" Act provision codified at 25 U.S.C. 47 to agencies other than BIA and Indian Health Service.

I understand that amendments being considered by your Committee would be designed to clarify questions raised by the Supreme Court decision in

Andrus V. Glover. Language in that decision implies that "Buy Indian" cannot be used for facilities construction or other non-competitive contracts because of superseding requirements of the Federal Property and Administrative Services Act. Upon request of this Committee and after appropriate Administration clearances, we will provide our views on these potential changes.

SBA SEC. 8 (a)

The existing section 8(a) Program has a number of advantages for Indian enterprises. First, there is no requirement of finding adequate competition; quite the opposite, 8(a) Program contracts are awarded in the absence of competition provided the bidder can perform the contract at a fair market price. If properly administered it could reduce the danger that a new business will be hurt by underbidding a job. Also, the 8(a) Program can be adequately coordinated because of the SBA's existing structure and authorities. In addition, the 8(a) Program is intended to provide small and disadvantaged businesses with the technical and commercial assistance they need in order to develop a package which is acceptable to the procuring agency and the 8(a) Program envisions an outreach effort to identify both the potential businesses and the potential agency procurement requirements.

We will be consulting with the SBA, the Department of Justice, and others to determine how the existing 8(a) Program could be strengthened with respect to Indian enterprises.

I thank you for inviting me here today. If you have any questions, I would be pleased to answer.

PREPARED STATEMENT OF WILFREDO J. GONZALEZ

I AM PLEASED TO HAVE THIS OPPORTUNITY TODAY TO OFFER COMMENTS ON CHAPTER 7 OF THE "REPORT OF THE TASK FORCE ON INDIAN ECONOMIC DEVELOPMENT," AND THE PROPOSED EXTENSION OF THE BUY INDIAN ACT (BIA) THROUGH AMENDMENT OF THE INDIAN SELF-DETERMINATION AND ASSISTANCE ACT (P.L. 93-638).

THE SBA SUPPORTS ANY EFFORT BY THE FEDERAL GOVERNMENT AIMED AT PROMOTING THE ECONOMIC WELL-BEING OF SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS IN GENERAL AND NATIVE AMERICANS IN PARTICULAR. AS A MATTER OF FACT, IN THE CASE OF THE LATTER, OUR AGENCY HAS BEEN ACTIVE IN ADDRESSING THE NEEDS OF THE NATIVE AMERICAN COMMUNITY. WE HAVE, FOR EXAMPLE, ENTERED INTO A MEMORANDUM OF UNDERSTANDING WITH THE DEPARTMENT OF DEFENSE (DOD) WHICH SETS FORTH THE EFFORTS BY THE TWO PARTIES IN THE PROMOTION OF THE FREE ENTERPRISE SYSTEM FOR THE BENEFIT OF INDIVIDUAL TRIBAL

MEMBERS AND TRIBALLY-OWNED BUSINESSES. DOD HAS AGREED TO DESIGNATE CERTAIN DEFENSE CONTRACTS FOR 8(A) CONTRACTS. OUR RULES AND REGULATIONS ALLOW SMALL BUSINESS CONCERNS OWNED BY TRIBES, AS WELL AS ALASKAN NATIVE REGIONAL CORPORATIONS, TO PARTICIPATE IN THE PROGRAM.

ALTHOUGH WE ARE GENERALLY SUPPORTIVE OF ANY EFFORTS WE DO OFFER THE FOLLOWING OBSERVATIONS:

- WITH REGARD TO AMENDMENTS C AND D TO SECTION 7 OF THE INDIAN SELF DETERMINATION ACT WE UNDERSTAND THE UNIQUE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE UNITED STATES AND INDIAN TRIBAL GOVERNMENTS, AND THEREFORE WE ACCEPT THE NEED FOR A SPECIAL STATUS FOR INDIAN TRIBES. HOWEVER, WE ALSO NEED TO WORK CLOSELY WITH OTHER FEDERAL AGENCIES TO DETERMINE THE APPROPRIATE EXTENT OF THIS RELATIONSHIP.

- I WOULD ALSO LIKE TO POINT OUT THAT ON PAGE 8 OF THIS REPORT THE WRITER ERRONEOUSLY STATES THAT SBA PROHIBITS MINORITY FIRMS FROM JOINT VENTURING WITH OTHER COMPANIES. SBA DOES, IN FACT, ALLOW FOR JOINT VENTURING. CHAPTER 4 OF OUR SOP 80-05 SPELLS OUT, IN DETAIL, CRITERIA GOVERNING SUCH VENTURES. THIS CRITERIA ALLOWS FOR 8(A) CONCERNS TO ENTER INTO JOINT VENTURE AGREEMENTS WITH ANOTHER 8(A) CONCERN OR WITH A SMALL DISADVANTAGED CONCERN WHEN THE JOINT VENTURE AGREEMENT MEETS THE FOLLOWING PROVISIONS:

1) THE SPECIFIC PURPOSE OF THE JOINT VENTURE;

2) PARTIES TO THE JOINT VENTURE SHALL BE CO-MANAGER;

3) THE JOINT VENTURE AGREEMENT SHALL PROVIDE FOR NOT LESS THAN 50% OF THE NET PROFITS AFTER TAXES EARNED BY THE JOINT VENTURE TO BE DISTRIBUTED TO THE 8(A) CONCERN;

4) A SPECIAL BANK ACCOUNT SHALL BE ESTABLISHED IN THE NAME OF THE JOINT VENTURE;

5) THE AGREEMENT SHALL CONTAIN AN ITEMIZED DESCRIPTION OF ALL MAJOR EQUIPMENT, FACILITIES, AND OTHER RESOURCES TO BE FURNISHED BY EACH PARTICIPANT TO THE JOINT VENTURE, WITH A DETAILED SCHEDULE OF COSTS;

6) THE AGREEMENT SHALL CONTAIN A "BEST EFFORT" PROVISION FOR THE UTILIZATION OF MINORITY SUBCONTRACTOR, SUPPLIERS AND SKILLED AND UNSKILLED WORKERS IN CONTRACT PERFORMANCE;

7) THE AGREEMENT SHALL SPECIFY THE RESPONSIBILITIES OF THE PARTIES IN THE AREAS OF:

   1) NEGOTIATION OF SUBCONTRACT

   2) CONTRACT PERFORMANCE

8) ACCOUNTING AND ADMINISTRATIVE RECORDS RELATING TO THE JOINT VENTURE SHALL BE MAINTAINED IN THE OFFICE OF THE 8(A) CONCERN.

° OUR COMMENTS CONCERNING THE TASK FORCE REPORT REFER TO SECTION VIII B AND E OF THE REPORT.

AS FAR AS SECTION VIII B IS CONCERNED, WE RECOGNIZE THE STRICT CRITERIA OUR 8(A) PROGRAM HAS IN PLACE APPEAR ONEROUS BUT SBA INTENDS TO MAINTAIN THEM AS THEY ARE. HAVING EXPERIENCED THE ABUSES WE HAVE HAD IN THE PAST, WE INTEND TO ENFORCE ALL SAFEGUARDS TO INSURE THE GAINS THE FIRMS IN OUR PORTFOLIO HAVE ACHIEVED.

THE TASK FORCE REPORT RECOMMENDS IN SECTION 8(E)5 THAT SBA REGULATIONS BE AMENDED TO AFFORD NATIVE AMERICAN OWNED FIRMS A LONGER FIXED PROGRAM PARTICIPATION TERM THAN THAT ESTABLISHED FOR OTHER SOCIALLY AND ECONOMICALLY DISADVANTAGED FIRMS. WE DO NOT AGREE WITH THIS RECOMMENDATION. AGAIN WE FEEL THIS ACTION WILL INVOLVE US IN THE TASK OF WEIGHING THE DISADVANTAGE STATUS OF ONE GROUP VERSUS ANOTHER, AN EXERCISE WE BELIEVE TO BE COUNTERPRODUCTIVE.

THE REPORT, IN SECTION 8(E)6 RECOMMENDS THAT AN INDIAN DESK BE ESTABLISHED IN SBA. WE WOULD BE WILLING TO CONSIDER THIS ACTION.

THESE ARE ESSENTIALLY OUR COMMENTS. WE ARE CERTAINLY INTERESTED IN THE OUTCOME OF THESE PROPOSALS AND WOULD BE MORE THAN GLAD TO COOPERATE WITH BIA IN THEIR EFFORTS, TOO.

MR. CHAIRMAN, THIS CONCLUDES MY PREPARED STATEMENT. I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

PROMISED TO ESTABLISH 75 NATIVE AMERICAN BUSINESSES
IN THE DOD MEMORANDUM OF UNDERSTANDING DATED 1983

	FY 83	FY 84	FY 85	FY 86	FY 87 (As of 2/87)
American Indian (Min. Code #2)	133	166	193	210	209
Eskimo/Aluet (Min. Code #5)	5	5	4	4	5
TOTAL	138	171	197	214	214

$ AMOUNT - (AMERICAN INDIAN)

FY 83	FY 84	FY 85	FY 86	FY 87 (As of 4/87)
$164,531,416 (# - 319)	$234,919,27 (# - 382)	$187,299,622 (# - 354)	$262,068,254 (# - 338)	$62,532,733 (# - 90)

$ AMOUNT - (ESKIMO/ALUET)

FY 83	FY 84	FY 85	FY 86	FY 87 As of 4/87)
$4,072,441 (# - 3)	$1,289,017 (# - 6)	$516,334 (# - 4)	$606,067 (# - 2)	$115,825 (# - 1)

PREPARED STATEMENT OF STEVE STALLINGS

Background

The Federal Government's policy of using its tremendous purchasing power to aid minority business enterprise (MBE) development is not new. What is of recent origin is the strength of the federal commitment to this policy: In Fiscal Year 1986, the government bought over $5 billion in goods and services from minority business enterprises, almost seven times the level of a decade ago and more than 450 times the $10.5 million level of federal MBE procurement in 1968. A minority business enterprise is defined by the U.S. Commerce Department's Minority Business Development Agency, as a business"...that is owned and controlled by one or more socially or economically disadvantaged persons including Blacks, Hispanics, Asian Americans, American Indians, Eskimos and Aleuts."

The present Administration has placed considerable resources into implementing this trend. In December of 1982, President Reagan set a goal of $22 billion in federal contract and subcontract awards to minority firms over the following three-year period and directed federal contracting agencies to establish minority-business procurement objectives for FY 1983 at least 10 percent above actual FY 1982 levels. He further directed the two federal agencies having direct minority-business mandates -- the Minority Business Development Agency (MBDA) and the Small Business Administration (SBA) -- to assist in creating 60,000 new minority business enterprises over ten years; called for an additional $6-7 billion in federal grants and cooperative agreements for minority-owned firms;

and announced $1.5 billion in credit assistance and $300 million in management and technical assistance as well. In July of 1983, Presidential Executive Order 12432 directed "each Federal Agency having substantial procurement or grant-making authority" to develop annual "Minority Business Development Plans" containing minority-procurement objectives for the agencies themselves, as well as methods for encouraging each agency's prime contractors to expand their minority subcontracting.

At the present time, according to MBDA figures, Black and Hispanic-owned enterprises account for 80 percent of the number of minority firms and 72 percent of gross receipts. The remainder is comprised of Asian-American and American Indian-owned firms.

I. Federal MBE Procurement

Federal procurement-related assistance to minority firms takes several forms. It may involve an explicit "set-aside" of some portion of an agency's procurement budget for minority firms which qualify as "small and disadvantaged businesses" under the SBA's Section 8(a) program (or similar program specific to a single agency and outside the 8(a) program). It may involve agency efforts to have its prime contractors subcontract a greater proportion of their procurements to minority firms. It may take the form of "direct minority procurement," under which the minority firm receives the award through a competitive or negotiated process rather than a set-aside. It may also involve direct-assistance incentives--grants, loans and loan guarantees. Beyond these forms of assistance available to American Indian firms generally, are other established preferences--notably the 1910 Buy Indian Act

and Section 7(b) of the Indian Self-Determination and Education Assistance Act of 1975 -which in some instances mandate, and in others permit, preferential contract awards to tribes, Indian organizations, and Indian-owned businesses regardless of their status as disadvantaged or non-disadvantaged. Finally, a more recent development has been the emergence of a "super-preference" at the Department of Defense which singles out SBA 8(a)-certified firms which are also Indian-owned and managed for additional preference.

Several points are worthy of particular note from the Indian-business perspective. They are:

- o A major shift has occurred in the form of federal assistance for minority-business development, away from direct assistance and toward procurement.

The growth in dollar-volume of federal minority-business procurement over the last decade-and-a-half has been explosive. SBA 8(a) procurement in FY 1982, at $1.9 billion, was 215 times its FY 1969 volume of $8.9 million. Combined direct-minority and minority-subcontract procurement in 1982, at $2.5 billion stood at 646 times the $3.8 million 1969 level. Stated another way, MBE procurement in FY 1982 accounted for 3.2 percent of total federal procurement, up from .03 percent in FY 1969. Direct federal aid to minority firms in the form of grants, loans and loan guarantees has also increased--but at a much slower rate than MBE procurement. In 1969, such direct assistance, at $200 million accounted for fully 94 percent of all federal funds obligated for minority business development. By 1974 - just five years later - this share had shrunk to under 40 percent. And in 1982, direct grant, loan and loan-guarantee assistance

accounted for just 32 percent of the federal total. (Even these figures are overstated insofar as the Departments of Housing, Labor and Transportation report as "grant" dollars, funds which eventually result in contracts with minority firms.) Given that defense spending is virtually certain to increase more rapidly than federal spending in most other categories for the foreseeable future, this situation, too, is likely to continue.

o Among federal agencies, the Department of Defense stands out as far and away the largest MBE-procurement entity.

Its total MBE procurement for FY 1986, at over $3 billion, is larger than all but three agencies' total procurement budgets, and more than eleven times the MBE procurement of the next-highest agency (Department of Energy).

o There is also considerable disparity among federal agencies as to the proportion of MBE procurement channelled through the SBA 8(a) (small and disadvantaged business) program, and that awarded to minority-owned firms both 8(a) and non-8(a) through competitive-bid, subcontract and other processes.

While, for instance, fully 60 percent of the Department of Energy's $270 million FY 1983 MBE procurement was achieved through minority-owned firms subcontracting with DOE prime contractors, in the Defense Department's case, the minority-subcontracting portion accounts for less than 21 percent. In the case of the Interior Department, almost 60 percent of MBE-procurement is outside both the 8(a) program and minority-subcontracting, a partial reflection of DOI's utilization of direct "Buy Indian" and Public Law 93-638

preferences in BIA and other contracting. Of the $4.8 billion in FY 1983 MBE procurement by all reporting agencies, the aggregate breakdown was: 42.8% through the SBA 8(a) program, 36.0% through direct minority contracting, and 21.3% through minority subcontracting.

II. Federal MBE Procurement Programs

A. Indian-Only Preferences:

Independent of the Section 8(a) program which stretches across the federal government, several agencies have statutory authority to give preferences specifically to Indian business.

1. "Buy Indian." The Bureau of Indian Affairs (BIA) maintains as formal policy that "all purchases or contracts are to be made or entered into with qualified Indian contractors to the maximum extent practicable," and that non-Indian contractors will be contacted "only after it has been determined that there are no qualified Indian contractors within the normal competitive area that can fill and are interested in filling the procurement requirement." Authority for this policy is the 1910 Buy Indian Act, coupled with other government wide statutory authority permitting an agency to negotiate contracts when "otherwise authorized by law."

This "Buy Indian" policy is also the policy of the Indian Health Service (within the Department of Health and Human Services), and has from time to time been extended to other Interior Department procurements outside the BIA by Interior Secretarial discretion. It was applied widely until a 1980 U.S. Supreme Court ruling held that conflicting statutory directives pre-empted the Buy Indian

Act's applicability to road-construction contracts. Subsequent to Glover, the Congress included as a provision in the 1982 Surface Transportation Assistance Act, a specific reiteration of the Buy Indian Act with regard to construction and improvement of Indian reservation roads and bridges; this action has been interpreted as overruling Glover in all jurisdictions except the State of Oklahoma (where the Glover case originated and where an injunction against application of Indian preference to road contracts is still in effect).

In FY 1971, less than $10 million in BIA procurement constituted "Buy Indian" contracts. By FY 1983, the figure had risen to approximately $60 million. And as result of the aforementioned Surface Transportation Assistance Act's earmarking of $100 million to reservation road and bridge construction and repair in each of FYs 1984 - 1986, the "Buy Indian" construction total alone is should surpass $95 million annually.

2. Public Law 93-638 and "Indian Subcontractors."

Whereas the BIA/IHS "Buy Indian" policy mandates the preferential purchase of goods and services from Indian industry, separate statutory authority contained in the Indian Self-Determination and Education Assistance Act of 1975 provides for contracting with Indian tribes and tribal organizations to run programs previously administered by the Federal Government. In FY 1983, the BIA awarded approximately $235 million in "638 contracts."

Section 7(b) of the Act, which expressly bestows this contracting authority, states that when a particular project benefits Indians, preference is to be given to the hiring of Indians and subcontracting to Indians. The latter term has resulted in the classification of another group of Indian firms as "Indian subcontractors": firms which are fifty-one percent or more Indian-owned or controlled. While not directly eligible for "Buy Indian" procurement set-asides, "Indian subcontractors" may apply for BIA certification as such, and then listed as such in a second category of the BIA's quarterly National Roster of Certified Indian/Alaska Native Economic Enterprises.

3. The "Buy Indian" Initiative of the Department of Defense.

Since FY 1983, Congress has inserted language in annual Defense Department appropriations legislation stating: "So far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in the open market at the discretion of the Secretary of Defense."

This added statutory encouragement for Indian procurement preferences at the Pentagon holds immense potential, given that the DOD awards some 12 million contracts valued at about $120 billion per year.

Implementation of the "Buy Indian" directive at DOD has taken a course which sets it clearly apart from its Buy Indian Act namesake. A threshold decision was made to tie implementation to DOD's overall effort to enlarge its industrial-supplier base. It was decided that procurement with Indian firms would be channelled through

the SBA 8(a) program, with the resulting prerequisite that in order to participate an Indian firm must first be certified "8(a)" by SBA. Toward this end, a Memorandum of Understanding (MOU) was signed between SBA and DOD officials in September 1983 and extended through September 28, 1988. The MOU, among other things, committed SBA to "receive" 150 fully completed applications for 8(a) status from tribal and individual Indian-owned busineses and to "target" 75 of those applications for certification. The DOD, in turn, committed itself to providing contract support for those firms. SBA has met its requirements under the MOU, however DOD has yet to expand the number of contracts and the amount of procurement dollars to Indians.

B. Small Business Administration Section 8(a) Program.

The Section 8(a) program permits agencies throughout the government to "set aside" --explicitly remove from the normal competitive-bid or negotiated-award process--portions of their procurement, which are then offered to individual firms which have been certified as "8(a)" firms by the SBA. Such firms may enter into all types of contracts (including but not limited to supply, services, construction, and research and development); they are also eligible to receive technical, managerial, and financial assistance from SBA.

General Eligibility Criteria: Applicants for 8(a) program participation must meet certain criteria respecting:

Ownership: In order to be eligible to participate in the 8(a) program, an applicant-concern must be one which is at least

51 percent owned by one or more individual(s) who are citizens of the United States (specifically excluding resident aliens) and determined to be "socially and economically disadvantaged";

Social Disadvantage: "Socially disadvantaged" individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. Native Americans (American Indians, Alaska Natives, Eskimos, Aleuts or Native Hawaiians) are deemed socially disadvantaged.

Economic Disadvantage: "Economically disadvantaged" individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged. No applicant is presumed "economically disadvantaged" based upon race; proof is required. In determining the degree of economic disadvantage, SBA looks at: (1) the personal financial condition of the disadvantaged individual; (2) business financial condition; (3) access to credit and capital; and (4) a comparison of the applicant concern's business and financial profile with profiles of businesses in the same or similar line of business and competitive market area.

Control and Management: An applicant-concern's management and daily business operations must also be controlled by one or more individuals determined to be socially and economically disadvantaged,

and such individual(s) must be engaged in the daily management and operation of the business concern.

Size Standard: In order to be eligible to participate in the 8(a) program, an applicant concern must qualify as a "small business concern." The particular size standard to be applied is based on the applicant's primary industry classification.

Potential for Success: To be eligible to participate in the Section 8(a) program, an otherwise eligible applicant concern must be determined to be one that with contract, financial, technical, and management support will be able to successfully perform subcontracts awarded under the 8(a) program, and that will have a reasonable prospect for success in competition in the private sector.

Ineligible Business: Businesses that do not meet the requirements of a "manufacturer" or "regular dealer" under the provisions of the Walsh-Healy Public Contracts Act are ineligible to participate in the 8(a) program. Specifically, brokers and packagers are ineligible.

Fixed Program Participation Term (FPPT): Every 8(a) program participant is subject to an FPPT. An FPPT establishes the ultimate time period during which a concern may remain in the 8(a) program and the conditions of participation, regardless of whether the concern becomes competitive in the private sector during that period. The maximum FPPT for all concerns is five years. However, not less than one year prior to the expiration of the FPPT, a concern may request SBA to review and extend its FPPT for a period

not to exceed the difference between the FPPT established in the business plan and the maximum FPPT of five years, plus two year (seven years total). There may be no further extensions.

Program Termination: Participation of a business concern in the Section 8(a) program may be terminated by SBA at any time for good cause.

C. 8(a) versus "Buy Indian"--Important Distinctions

Four important distinctions exist in the manner in which an Indian-owned enterprise might achieve designation as an SBA 8(a) firm and as an "Indian Contractor" for purposes of the Buy Indian Act. Those distinctions are:

Showing of "disadvantagedness": An 8(a) firm must be owned and managed by "socially and economically disadvantaged individuals"; no such showing need be made by an Indian business-owner seeking certification as an "Indian/Alaska Native Enterprise" eligible for "Buy Indian" set-asides.

Degree of ownership: The disadvantaged individual must own at least 51 percent of an 8(a)-certified firm's voting stock. In contrast, a "Buy Indian"-certified contractor must be "a legal entity which is 100% Indian owned and controlled."

Definition of "Indian": The SBA takes a self-identification approach to applicants claiming "Indian" status. Under BIA "Buy Indian" policy, the applicant must show that he is a member of a particular tribe or else that he is considered to be Indian by the tribe with whom he claims affiliation.

Special Concern for Tribally-Owned Enterprises: Of special concern to tribes operating tribally-owned businesses (as distinguished from those owned by individual tribal members) is an internal SBA interpretation of "socially and economically disadvantaged" individual, which limited joint ventures and non-Indian managers as a competitive strategy.

As of September 1986, approximately 170 8(a)-certified businesses were Indian or tribally-owned. Several interesting facts emerge from a review of a listing of these Indian-owned 8(a) firms. More than one-half list their primary business activity as "general contracting," "construction," "builder" or similar classification and are thus inclined to be highly localized in their commercial activity. 8(a) support may be a two-edged sword, given that when these firms' 8(a) participation terms expire (as some will in the next few years), they will face the likelihood of having to compete to retain those contracts with other non-8(a) businesses. Current SBA eligibility criteria for tribal participation in 8(a) includes:

- Disadvantaged status is determined by measuring income levels, number in poverty, and unemployment.
- Test of non-trust assets: valuation.
- Manager must be an Indian and must be the key decision maker.
- Board members must submit personal financial and personal history statements.
- Applications will receive special handling.

Recommendations

I. Buy Indian Act

A. Have the Act apply to all federal agencies with Indian funding ("for the benefit of") including ANA, BIA, IHS, Bureau of Reclamation, EPA, Army Corps of Engineers, National Park Service, Department of Agriculture, HUD and/or expenditures on federal lands for the benefit of Indians.

B. Enforcement of the Act should be implemented through local Tribal Employment Rights Office's (TERO) by having:

1. BIA act as the certifying agency,
2. The TERO serving as a local review/oversight board, and
3. Periodic review to occur during and after a "report of project impacts."

C. Require only 51% ownership by a recognized Indian and no necessity to be on or near reservations.

D. Employment requirements not to be a part of certification requirement, but rather a goal for each project, for example:

1. Company "Core Crew" must be $\geq$ 25% Indian
2. Project related local employment must be $\geq$ 60%

E. Adopt a uniform certification form and application process to serve as certification for all applicable federal agencies and their sub-offices.

F. Assume that all contracts are to be let Indian preference where the Act applies.

II. **Indian Preference - 7(b) Indian Self-Determination Act**

A. Assume all contracts are Indian preference through a (3) step process:

1. Advertise as Indian only, if < one Indian bids, then
2. Require subcontracting to Indians $\geq$ 25%, and
3. Indian employment preference goal to be established by local TERO.

B. All contracts are to be issued to Indians when they are within 10% of the lowest non-Indian bid. When all bids exceed the government estimate, government estimate should be revised by negotiation.

C. BIA oversight committee or boards are not necessary if Act is properly amended, discourage their use.

D. Exclude:

1. minimum/maximum procurement to particular tribes.
2. the location of business as an eligibility criteria.

E. Include independent T/TA to implement new Indian preference policies.

III. **8(a) SBA**

A. BIA should be the only source of "Indianness" certification (must meet "51% buy Indian" requirement).

B. DOD should set aside ½ of 1% of its budget as a target.

Options:

1. count new contracts only,
2. specific set aside (similar to labor surplus areas), and/or

3. 8(a) method with minimum goal (½ of 1%).

C. Limited financial information to the business' Board of Directors and use overall tribal financial statements.

D. Assume 2 times 7 years as the maximum FPPT or 14 years (10 + 4).

E. Through the use of joint ventures with non-Indian management which require divestiture agreements, allow for Indian 8(a) applications that expand Indian goods and services availability, capability and capital resources.

F. Buy Indian rules should apply to 8(a) as a pre-eligibility determination for participation with SBA.

G. Tribes should only be required to maintain management control rather than management responsibility. Allow for adequate training periods of tribal members who will become CEO's and COO's later.

H. Use alternative organization methods to ensure independence and continuity of management and political leadership while increasing Indian procurement.

I. MOU improvements for DOD:

1. progress cited by DOD predates current accomplishments, SBA must be required to seek and obtain DOD contracts for Indian enterprises.
2. DOD must implement a procurement process to target specific contracts to Indians.

J. Streamline 8(a) nationwide application process for Indians by:

1. assuming eligibility by virtue of BIA certification, and
2. assuming contract support exists.

K. Set aside specific business development enterprise dollars for Indian firms.

Recommended Amendment to Indian Finance Act SB-721, SB-788 and Future Indian Economic Development Legislation

There shall be established an American Indian National Center for Economic Development to initiate research, compile economic data, and serve as an information resource for Tribal governments in the field of American Indian economic development; assess training needs, create effective training models, implement training programs, and develop longitudinal evaluation data on financial assistance-training effectiveness in the field of American Indian Economic Development, including entrepreneurship; and operate a technical assistance clearinghouse for American Indian economic development to identify cost-effective delivery systems, determine effective technical assistance resources, and provide Tribal Governments and American Indian entrepreneurs with relevant technical assistance/information. The Center will perform Socio-Economic-Cultural impact assessments to ensure economic development initiatives are sensitive to Tribal values. This American Indian National Center shall be awarded contracts from the Bureau of Indian Affairs in five year increments to allow for longitudinal data collection and research. The Center will operate with independence from the Bureau of Indian Affairs by provision of a National Advisory Council for American Indian Economic Development to provide policy and program direction and oversight. The Council will be comprised primarily of American Indian expertise in economic development, selected by the President and approved jointly by the Senate Select Committee on Indian Affairs and the Committee on Interior and Insular Affairs of the U.S. House of Representatives.

1987 MAY 11 PM 4:03

UNITED INDIAN DEVELOPMENT ASSOCIATION

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Melvin J. Carriere
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May 4, 1987

The Honorable Daniel K. Inouye
Chairman
Select Senate Committee on Indian Affairs
United State Senate
Washington, D.C. 20510

Dear Chairman Inouye:

The United Indian Development Association wishes to again express our appreciation to the Select Senate Committee on Indian Affairs for the opportunity to testify on amendments to the Indian Finance Act, the Buy Indian Act and related Indian preference legislation.

Let me re-emphasis in writing our major recommendations:

Indian Finance Act

* Clarify the grant program of the Act to be a 40%-60% match. SBA in its programs requires at least 30% equity and OMB's current position to maintain a 25%-75% match is unrealistic for Indian applicants.

* Do not allow the sale of direct loans by the BIA, this is not financially advantageous to the government.

* Increase authorization of the Indian Finance Act up to $500 million beginning in 1988, this will be necessary as the program is enhanced and demand is stimulated.

* Expand eligible issuers of the guarantee to include all regulated banks and non-banks.

* Increase size of guaranteed loans for individuals to $500,000.

Los Angeles Region/ National Center
9650 Flair Drive, Suite 303
El Monte, CA 91731
(818) 442-3701
(800) 423-0452

Phoenix Region
2111 E. Baseline Rd., Ste. F-8
Tempe, AZ 85283
(602)831-7524

Northern California Region
411 J Street, Suite 7
Eureka, CA 95501-0581
(707) 445-8488

Northern Arizona Region
9 West Cherry Ave., Suite A
Flagstaff, AZ 86001
(602) 774-3315

San Diego Region
365 W. Second Ave., Ste. 204
Escondido, CA 92025
(619) 746-7356

* Include a full security bonding program within the Act.

* Add full "faith guarantee" to the Act.

Buy Indian Act/Indian Preference

* Have the Act apply to all federal agencies and contracts with authorizations "for the benefit of Indians."

* Improve enforcement of the Act as outlined in our testimony.

* Reduce Indian ownership and control requirement to 51%. Require no other criteria for a participation in the Act, except for establishing local Indian employment impacts.

* Include a program of training and technical assistance as previously recommended in our testimony.

* Set-aside ½ of 1% or Defense procurement budget to impact Indian reservations.

Respectfully yours.

Steven L.A. Stallings
President

/sd

cc: The Honorable Quentin N. Burdick
The Honorable Thomas A. Daschle
The Honorable Dennis DeConcini
The Honorable John Melcher
The Honorable Daniel J. Evans
The Honorable John McCain
The Honorable Frank H. Murkowski
Alan Parker, Staff Director

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Human Resources Management
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Marvin J. Carriers
Vice President

May 5, 1987

The Honorable Senator John McCain
United States Senate
1123 Longworth House Office Building
Washington, D.C. 20515

Attention: Dan Lewis

Dear Senator McCain:

Enclosed please find our response to questions on the Indian Finance Act and Buy Indian Act hearings:

Indian Finance Act

1. What is a more realistic capital mix for the Indian Finance Act grant program? A 75/25% or 60/40% match?

Ans. Because American Indians have accumulated very little capital, the 40%-60% matching grant is more realistic. Even the Small Business Administration requires a 30% equity investment for its loan programs.

2. Why do you believe the limit on the loan guaranty authority should be expanded? And to what amount?

Ans. When amended, the Act will greatly enhance the marketability of its programs resulting in an increased demand for those programs, the Act's current limit will not allow this urgently needed expansion.

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El Monte, CA 91731
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3. What should the expansion of Indian Finance Act programs include?

Ans. The Act must be improved to allow for current Indian financing needs, these two actions will help to create diverse Indian financial institutions and assist Indian construction contractors:

a) Allow funds use to capitalize MESBICs and other financial institution and

b) A "full surety" bonding program.

4. Is a $350,000 limit on individual loans a realistic maximum in today's environment?

Ans. No. Today's business environment requires a minimum of $500,000 to get a simple hamburger stand financed.

Buy Indian Act/Indian Preference

1. How does a minimum of 51% ownership increase Indian business opportunities?

Ans. By making the requirement 51% ownership and control, Indian opportunities are increased by outside capital and expertise in joint ventures and other organizational forms.

2. How would you insure that amendments to the Buy Indian Act will improve enforcement of the preference provisions?

Ans. By first issuing all contracts "for the benefit Indians" as Indian preference and delegating enforcement to local TERO/tribal bodies.

3. How would you simplify the current certification process?

Ans. By adopting a single certification process and form administered by the BIA.

4. How would you increase business opportunities for Indians outside those Federal agencies serving Indian communities?

Ans. Because of the size of the Department of Defense, a set aside of ½ of 1% of its procurement budget should be spent on Indian reservations to improve employment and income levels.

5. How would you avoid self-certification under the Small Business Administration's 8(a) program?

Ans. Require the SBA to request a Buy Indian preference certification of all Indian applicants to the 8(a) program.

Thank you for the opportunity to clarify the recommendations in our written testimony.

Cordially,

Steven J.A. Stallings
President

/sd

PREPARED STATEMENT OF CONRAD EDWARDS

Mr. Chairman and members of the Committee, on behalf of the Council for Tribal Employment Rights (CTER) thank you for the opportunity to present our testimony on Indian preference and economic development, two of the most crucial challenges facing Indian and Native People today. We hope to introduce you to a "tribal alternative" to Indian economic history repeating itself. You are no doubt aware that Indian economic history for the past two hundred years has been one of dependency or public resources, exclusion from decision and policy making, and denial of opportunity to participation in the economic development of our own communities. First, allow me to provide you with some background information on our organization and our approach to meeting the challenges already mentioned.

The Council for Tribal Employment Rights (CTER) is an Indian owned and operated, non-profit corporation comprised and representing the interests of the one hundred four Tribal Employment Rights Offices (TEROs) on a nationwide basis. We

provide training and technical assistance to Indian Tribes and Native organizations in all facets of Indian preference in employment, training, business, and economic development. Utilizing our experience on the reservations we have developed the TERO concept of Indian self-determination. The TERO concept is a sovereignty-based, self-help, systematic plan which operates on the premise that economic rights are sovereign and protected rights just as water, mineral, hunting and fishing rights are; the TERO concept begins with the economic development of Indian workers through their gainful and meaningful employment. This is accomplished by utilizing the inherent sovereignty of the tribes to develop and enforce a TERO ordinance which preserves and protects the tribe's right to preferential employment, training and business opportunities within the exterior boundaries of the reservation. Utilizing the tribe's powers of exclusion and existing federal Indian laws, the tribes can capture existing opportunities currently available to Indian workers but being monopolized by non-Indians.

Once the tribe has successfully captured existing opportunities and has begun to qualify tribal members in sufficient numbers, the tribe can then begin to develop new opportunities for placements either in new businesses or those existing adjacent to the reservation. This can be done through

effective public relations and negotiations directly with the employers or through application of appropriate federal laws and regulations.

The essential elements of the concept are:

- A strong enforcement program which optimizes existing federal and Indian preference laws,
- the development of a tribal legal framework and governance infrastructure to ensure local control,
- establishing non-adversarial, collaborative relationships with public and private sector employers operating on and near the reservation.

Does the TERO concept work?

Over the past ten years the TEROs have applied the TERO concept with dramatic results at the reservation levels in the areas of employment and training. Some actual examples are as follows:

- The Makah Tribe of Washington State today has the lowest unemployment rate (27%) it has experienced in the past one hundred years,
- The Upper Skagit Tribe also of Washington State reduced their reservation unemployment rate from fifty-nine percent (59%) to thirty percent (30%) in the first six months of TERO operations.
- The Blackfeet Tribe of Montana experienced zero to twenty-five percent (25%) Indian hire on a few

of the federal and state funded projects which took place on their reservation in 1978. Today the Tribe consistently experiences sixty to seventy-five percent (60-75%) Indian hire on public, private, and tribally funded projects on the reservation, and on some occasions they have negotiated as high as ninety-five percent (95%) Indian hire.

- The Shoshone-Arapaho Tribe of Wyoming began TERO operations in 1982 and today they have a self-supporting TERO operation which is complete with a TERO ordinance, a set of Tribal Business Codes, and a Bureau of Apprenticeship and Training certified training program.

One of the most significant impacts occurred in 1986 and involved Equal Employment Opportunity Commission (EEOC) funding for thirty-four (34) TERO operations. The funds were allocated in direct, fixed priced contracts of twenty-five thousand dollars ($25,000.00) each to the thirty-four tribes and totalled eight hundred, fifty thousand dollars. The TEROs were funded to enforce Title VII of the 1964 Civil Rights Act on behalf of EEOC in the reservation communities. The investment resulted in $16,712,111.00 in backpay, wages, contracts, fees, fines, and damages which were generated from TERO charges against employers who had discriminated against

Indian people. In addition those same TEROs placed 5,672 individual Indian workers out of the 9,135 Indians recruited and the 12,356 referrals they made. It should be noted here that these numbers represent the work of one third of the TERO operating today. In 1986 the ninety-seven operating TEROs placed an estimated twenty-one thousand (21,000) Indian workers nationwide at the an average wage of eleven dollars ($11.00) per hour which in turn generated in some $480 million in economic impact in Indian country. These examples are indicative of the capabilities of tribes under adverse conditions, imagine if you will what can be accomplished with the right assistance.

While the tribes have made significant progress in dealing with the barriers to Indian employment and training a critical lack of economic activity still prevails throughout Indian country. Until the levels of activity are significantly increased there will be no jobs for which to train our people and no place to place them if they do become skilled. Further growth and development will require:

- outside investment in the development of tribal resources and communities,
- adequate bonding and capital resources to assist and encourage Indian entrepreneurship
- adequate technical resources in business, enterprise, and financial management to ensure successful economic ventures.

The legislation you have before you today Senate Bill Number 788, the "Indian Economic Development Act of 1987," Senate Bill Number 721, the "Indian Development Finance Corporation Act," and the amendments to the "Indian Finance Act" and the Indian Self-Determination Act all seek to address the aforementioned needs. We wholeheartedly support the passage of these acts and amendments, Senate bills 788 and 721 because they promote and encourage Indian economic development and provide valuable technical and financial resources, the amendments clarify and put teeth into existing laws which to date have lacked adequate enforcement procedures and clearly state agency responsibilities.

At this time, I would like to defer to our general counsel for a more technical explanation of the proposed economic development amendments to the Self-Determination Act. Mr. Chairman, members of the Committee, I thank you for this time and the opportunity to provide you with our perspective on these important matters.

PREPARED STATEMENT OF DANIEL S. PRESS

Mr. Chairman and members of the Committee. I appreciate the opportunity to testify before this Committee on one of the most critical issues facing Indian country today -- unemployment and lack of economic activity on Indian reservations and how Indian preference can be used to address these problems. I have spent the past 15 years working on these issues. I was one of the founders of the TERO program and have served as its general counsel since its inception. I represent American Indian architects and other Indian small business persons on Indian preference issues. I have litigated numerous Indian preference cases in Federal and tribal courts and have written five books and manuals on Indian preference. I negotiated the Memorandum of Understanding on Indians between SBA and DoD and have assisted Indian firms seeking to utilize that MOU. I have assisted many tribes to try to attract industry to their reservations.

I would like to share with the Committee my observations from this experience and my recommendations.

There are both real and artificial barriers to Indian employment and Indian economic development. Artificial barriers is a polite term for employment discrimination and a great deal of it exist in Indian country. As just one example, FMC, Inc., a Fortune 500 company, has a large plant on the Fort Hall Indian Reservation in Idaho near Pocatello. The facility processes minerals mined on the Shoshone-Bannock Reservation. The 3,500-person tribe suffers from a 50% unemployment rate. Yet of the 600 persons employed by FMC, only 26 or 4% are Indian, (which is up from only four in 1981). Yet, virtually every employee in that facility began as an unskilled entry level worker so qualification and training is not the issue. It is discrimination, and as the TERO program has demonstrated, Indian preference can be a very effective tool for overcoming this discrimination.

There are also real barriers to economic development. Because there is so little economic activity on the reservations it is extraordinarily difficult for tribes to attract outside industry. Outside industry looks at a reservation and sees no thriving industrial sector and none of them wants to be a pioneer and be the first to set up there. Something else needs to be done and done quickly to create the initial nucleus of economic activity on reservation, which will in turn attract outside industry and help Indian small businessmen.

Someone needs to take the first step and that someone needs to be the Federal government and tribal governments working cooperatively. The second questions is how. The answer does not lie with SBA. Their mission is to create minority small businessmen, not to create employment. No matter how hard you beat them, they will resist every effort to turn the 8(a) program into a vehicle for solving the Indian employment problem.

However, the TERO program has demonstrated what I believe is a better approach. It has demonstrated that Indian preference, when used properly in a coordinated effort by tribal governments and the Federal government, can be an extremely effective tool for promoting Indian employment and economic development. Also by eliminating the frustrations caused by constantly knocking your head against the artificial barriers, TERO Indian preference has turned loose the creativity and industriousness of the Indian people. I am proposing to the Committee new approaches for the tribes and the Federal government to jointly use Indian preference as a vehicle for promoting Indian economic development.

The approach I am proposing for your consideration, and it still has many rough edges, is based on the very successful federal preference program for the blind and handicapped, which is designed to promote employment (unlike the 8(a) program). It would create a Federal Committee for Indian Procurement, which would have the authority to pull out

of the competitive process any federal contract (beginning with three Federal agencies, DoD, USDA and Interior) and give it to a 51% tribally owned business, located on a reservation and employing at least 75% Indian workers. The bid price would be fair market value rather than what SBA now requires which is that the 8(a) company match the lowest competitive bid. Once the tribe received the contract, it would keep its as long as it performed and met the hiring percentages. Like Blind and Handicapped contracts, and unlike 8(a), it would not be for a limited period with a forced graduation. A nonprofit organization would be funded to assist tribes use the Act, just as nonprofits have successfully done for blind and the handicapped.

This approach has a number of advantages:

1. It is simple and direct.

2. It is limited, in that only tribes could access it and there is a limit on the amount of federal procurement each tribe could access each year.

3. It guarantees the federal agencies a quality product. DoD in particularly has resisted implementation of the Buy Indian Act because tribal businesses have no track record and DoD is afraid it will not get a quality product. Under the proposed approach, the tribe could joint venture with an established corporation experienced in the area it will be working -- e.g., an IBM or a Sperry -- a relationship a tribal industry cannot enter into under the 8(a) program. This creates a win-win situation. The reservation gets employment, the Tribe gets economic experience, IBM gets profits and the government gets a quality product. Also, the private established corporation probably will be familiar wit the DoD or other agency contracts arena and could assist the tribe and the Indian Procurement Committee to identify appropriate

contracts for the Committee to pull and give to the tribal venture.

4. It can be put into place very quickly because it does not require any new appropriations. The total direct cost for the program --of setting up the Committee and then funding a non-profit corporation to work with the tribes would be under $500,000 and would be paid for by the BIA out of existing resources.

This approach may cost the government a small additional amount in procurement because it will be paying fair market price rather than the lowest competitive bid price. On the other hand it will save much more money in reduced welfare payments, reduced health costs as the workers get health insurance, and reduced costs for those many budget items that go to addressing the myriad social problems that result from unemployment. So the costs and saving will probably be a wash. But from an implementation point of view, it will not require any new direct appropriation to get it up and running.

I'd like to pursue this ease of implementation aspect a little further. The Committee is also considering other approaches on Indian economic development. I am not suggesting that this approach eliminates the need for an Indian Finance Development Corporation, Indian Economic Enterprise Zones or changes in the 8(a) program. But unlike these approaches, this one can be put into place without new appropriations, without fighting the tax reform trend in the Finance and Ways and Means Committees, or fighting the resistance and delays SBA will

mount against any effort to turn 8(a) into a special tool for Indians.

I mentioned there should be a nonprofit organization funded to help the tribes use this new approach. This is essential to the success of the program. One of the keys to the success of the TERO program has been the resources and support available from CTER, a national nonprofit organization created to assist TEROs. Each tribe, pursuant to self-determination, made its own decision on whether it wanted to start a TERO. CTER never proyletized. But once a tribe made the decision to start a TERO, CTER was there to provide a model ordinances the tribe could adapt to its own needs, a manual on how to operate a TERO, training programs for TERO directors and tribal elected officials, legal advice, and a TERO network so the new TERO could draw strength from the already existing TEROs. A nonprofit organization is needed to provide similar kinds of support and resources to the tribal businesses using the proposed new procurement authority.

Finally, the TERO programs has shown that another key element for success is community education. The TERO program realized early on that it would succeed only if it had a knowledgeable constituency. The members of the tribe needed to know what the TERO could do and what it couldn't do, what opportunities the TERO program offered them and what responsibilities it imposed on them. This community education has reduced the constituency pressure on tribal councils to

make inappropriate demands on the TERO and has assisted the TEROs to remain stable in the face of the frequent and dramatic political changes that occur on many reservations.

A similar education program is needed on reservations that will be using the proposed procurement program. They will need to know the legal structure of the new venture, its capabilities and restrictions, and the opportunities it offers and the responsibilities it imposes on them as stockholder and potential employees of that venture. I therefore urge that the Committee institutionalize a community eduoation component into the proposed approach.

Attached as Exhibit A is draft bill language implementing the proposed approach, with supporting justification. Exhibit B is bill language for amending the Buy-Indian Act to address weaknesses in that Act, again with supporting justification. They are structured to be new sections 7(c) and 7(d) of the Indian Self-Determination Act. This would group all of the Indian preference laws into one place in P.L. 93-638. The group would include the 7(b) Indian subcontracting and employment provision on contracts for the benefit of Indians already in P.L. 93-638, the new 7(c) Buy Indian Act providing preference in prime contracts for the benefit of Indians, and the new 7(d) providing preference through the Committee for Indian Procurement. The Self-Determination Act is the appropriate vehicle for such provisions because for there to be true self-determination

tribes need to create viable economies on their reservations as well as to assume control of the government programs serving them.

Again, I appreciate the opportunity to submit this testimony. I am available to assist the Committee and its staff to refine and revise the proposals. I urge the Committee to act quickly and forcefully to make the Indian economic desert blossom.

New Section 7(d)

Committee for Purchases from
Tribally-Owned Enterprises

1. Establishment of Committee

A. Committee

There is established a committee to be known as the Committee for Purchases from Tribally-owned Enterprises. The Committee shall be composed of five members appointed by the President as follows: one officer or employee each from the Department of Defense, the Department of the Interior and the Department of Agriculture, one person who is a chairman of a federally recognized tribe and one person not employed by the United States Government who is knowledgeable about Indian economic enterprises.

B. Vacancy

A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

C. Chairman

The members of the Committee shall elect one of their number to be Chairman.

D. Terms

(1) Except as provided in paragraphs (2), (3), and (4), members appointed under paragraph (2) of this subsection shall be appointed for terms of five years. Any member appointed to the "Committee under such paragraph may be reappointed to the Committee if he meets the qualifications prescribed by that paragraph.

(2) Of the members first appointed under paragraph (2) of this subsection:

(A) one shall be appointed for a term of three years.

(B) two shall be appointed for a term of four years, and

(C) two shall be appointed for a term of five years.

as designated by the President at the time of appointment.

E. Pay and Travel Expenses

(1) Except as provided in paragraph (2), members of the Committee shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of services for the Committee.

(2) Members of the Committee who are officers or employees of the Government shall receive no additional pay on account of their service on the Committee.

(3) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of Title 5.

F. Staff

(1) The Assistant Secretary of Indian Affairs shall provide such personnel as are required to provide staff for the Committee from existing BIA employees and upon a nonreimbursable basis.

G. Obtaining Official Data

The Committee may secure directly from any entity of the Government information necessary to enable it to carry out this section. Upon request of the Chairman of the Committee, the head of such Government entity shall furnish any such information to the Committee.

H. Administrative Support Services

The Assistant Secretary of Indian Affairs shall provide to the Committee on a nonreimbursable basis such administrative support services as the Committee may request.

I. Annual Report

The Committee shall, not later than December 31 of each year, transmit to the President and to the Congress a report which shall include the names of the Committee members serving in the preceding fiscal year, the date of Committee

meetings in that year, a description of its activities in that year, and any recommendations for changes in these sections which it determines are necessary.

2. Procurement

(i) The Committee shall establish and publish in the Federal Register a list, (hereinafter referred to as the "procurement list") of any commodity that is produced by a tribally-owned enterprise or which such an enterprise demonstrates it has the capability to produce. The Committee may add to and remove from the procurement list commodities so produced.

(ii) If any entity within the Department of the Interior, the Department of Defense or the Department of Agriculture intends to procure any commodity that is listed on the procurement list, that entity shall, in accordance with the rules and regulations of the Committee, procure such commodity at the price established by the Committee pursuant to paragraph (4) of this subsection, from a qualified tribally-owned enterprise if the commodity is available within the period required by that Government entity; this procurement requirement shall take priority over all other federal procurement preferences except for matters affecting national security or national emergencies and except with respect to the procurement of any commodity which is available for procurement from an industry established under Chapter 307 of Title 18 or Sections 46-48 of Title 41 and which pursuant to such

respective sections is required to be purchased from the blind, severely handicapped, or Federal Prison Industries.

(3) The dollar amount of contracts that a tribe may receive for all of its tribally-owned enterprises under this provisions of this subsection in any Federal fiscal year shall be X, where X is determined by the following ratio:

$$\frac{X}{\$3 \text{ billion}} \text{ is to } \frac{\text{tribal population}}{\$1,000,000}$$

provided that no tribal entitlement shall be lower than a contract dollar amount of $500,000 in any fiscal year.

(4) Fair Market Price; Price Revisions

The Committee shall determine the fair market price of commodities which are contained on the procurement list and which are offered for sale to the Government by any qualified tribally-owned enterprise. The Committee shall also revise from time to time in accordance with changing market conditions its price determination with respect to such commodities.

(c) Central Nonprofit Agency; Designation

The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities on the procurement list among qualified tribally-owned enterprises and otherwise to assist tribes make use of the provisions of this subsection.

(6) Rules and Regulations

The Committee may make rules and regulations on (A) specifications for commodities and services on the procurement list, (B) the time of their delivery, and (C) such other matters as may be necessary to carry out the purposes of this subsection.

(e) Problems and Production Methods; Study and Evaluation

The Committee shall make a continuing study and evaluation of its activities under this section for the purpose of assuring effective and efficient administration of this title.

(6) Definitions

A qualified tribally-owned enterprise is one that is no less than 51% owned by a federally recognized tribe or Alaska Native Regional Corporation, is located within the exterior boundaries of that tribe's reservation or Region, and in which not less than 75% of the person hours worked by employees of that enterprise are worked by Indians. Provided further that for any enterprise that has received contracts pursuant to this section for five year or more, the percentage of person hours worked by Indians shall be no less than 90%. The tribally-owned enterprise may be a wholly-owned entity of the tribe under its Section 17 corporation or otherwise, a tribally chartered corporation, a state chartered corporation, or any other legal entity. The enterprise may joint venture

with a nontribally-owned enterprise so long as the tribally-owned enterprise owns 51% or more of the joint venture and the other requirements of this section are satisfied.

(7) Implementation Schedule

The President shall appoint the Committee, the Committee shall promulgate temporary regulations, and the Committee shall begin operation all within 180 days from the date of enactment of this Act.

III. JUSTIFICATION FOR NEW SECTION 7(d)

There is a critical need for jobs on reservations, particularly jobs in manufacturing. It is extraordinarily difficult to persuade an outside corporation to put a facility on a reservation. In addition to the lack of incentives, there is little experienced management, rarely an existing manufacturing facility that has developed a pool of skilled and experienced workers, and many other factors that discourage rather than encourage outsiders to come in to the reservation.

The immediate need is to create jobs and to begin a manufacturing sector on the reservation that can provide the critical mass necessary to attract other manufacturing employers. SBA is not the answer to this problem. SBA's goal, under its 8(a) program is to create small minority owned businesses that can compete without SBA help in up to seven years. They require that the minority (and in the case of tribal enterprises, the tribal members) be the managers, when

their is little experienced management within most tribes. The price bid by the 8(a) company must be the lowest price bid under the last competitive bidding for that contract, so the minority has to be competitive with the large companies presently doing the work. At the same time, SBA prohibits the minority from joint venturing with companies that have capability in a particular area because of the fear that the minority is simply fronting for the experienced company. But most importantly, and the cause for these other barriers in regard to what reservations need right now, SBA does not have a mandate to create jobs. Thus, when you tell them that allowing an experienced corporation to work with a tribal enterprise should be permitted because it will create employment, they respond that jobs is not their issue, and they are correct. While changes are needed in the SBA program to make it easier for Indian entrepreneurs to participate in the program, it is futile to try and change SBA to serve as the vehicle for creating a substantial number of jobs in a short period on reservations. That is simply not their mandate.

The proposed approach takes a more direct approach, based on the approach used for the Blind and Handicapped (and to a lessor degree the Federal Prison Industries). The Congress' goal for the latter groups, as for Indians, is to create jobs. The approach that was used was direct, uncomplicated and extremely effective. It permits the blind and handicapped to pull out of the competitive process any

contract that the blind and handicapped are capable of doing the work on, which is defined as any commodity or service the government uses that can be done with the blind and handicapped performing at least 75% of the person hours on that contract. Once that is demonstrated and the work is done in a quality manner, that contract becomes that blind or handicapped industry's contract to keep forever, so long as 75% of the work continues to be done by blind and handicapped workers. The kinds of contracts have expanded from brooms and pencils to virtually anything the government does so long as the blind or handicapped can do it. The price is set at fair market so they cannot abuse the contract but they do not have to match the lowest priced company out there. The government funds a non-profit organization to help blind and handicapped industries identify contract, though because of a huge backlog in requests, the burden really falls on the individual blind or handicapped industry to find a suitable contract and then get it processed through the nonprofit organization and the official Committee.

Adopting this approach for tribes would be the fastest way to create employment and a manufacturing sector on reservations. To avoid abuse, the proposed language limits eligibility to tribes, but they can give up to 49% ownership to an outside company. The facility must be located on a reservation and at least 75% of the jobs must go to Indians. This would allow a tribe to joint venture with an IBM or

General Electric, pick out a particular Defense Department procurement that IBM has expertise in, have a guaranteed contract for as long as the operation continues, and thereby create jobs and manufacturing sector on the reservation. The government would get a quality product that has the management involvement of an experienced company and would get it at fair market price. It appears to be a win-win situation for the government, tribes and the corporations that joint venture with them.

The proposed language would create a limited program that would keep tribes from taking too much of the federal government's procurement activity. A limit on the total dollar amount of contracts all tribes can receive is set at 1 and 1/2% of all federal procurement dollars, or $3 billion in any fiscal year. An individual tribe's ceiling is based on a ratio that limits the tribe to a percentage of the $3 billion that is equal to the percentage its tribal population is to the total population of reservation Indians. It sets a floor of $500,000 so even small tribes could obtain a viable contract.

Initially at least, the proposed language provides that tribes may receive contracts from only three agencies DoD, Interior, and USDA. DoD was chosen because of the size of its procurement activities and because it has already been mandated by Congress to give some form of preference to Indians. Interior was chosen because as the trustee for Indians, it should be at the forefront. Also, agencies such as National

Parks and Bureau of Reclamation procure a range of items that tribes could manufacture, such as uniforms and signs. USDA was chosen on the belief that it is important for reservation economic development to promote maximum use of tribes' most abundant resource, their land. USDA buys a range of food products, such as beef and flour for the commodity foods program. If these are processed on reservations, it would not only give a boost a manufacturing but would promote agricultural activities as well.

The Indian procurement program would not take priority over blind, handicapped or prison industries, but would take priority over all other federal procurement priorities, such as 8(a). As with the Blind and Handicapped, a committee would be established to certify contracts as being appropriate for the program and to set the fair market price for the commodity. (Because the purpose of the program is to promote manufacturing, it covers only products, and excludes services.) A nonprofit would be funded to help identify possible procurements, though it is expected that the large companies many tribes will be joint venturing with will have the pulse of the agencies and be able to more quickly spot the contracts that tribal enterprises should be seeking. Otherwise, the problem is modeled on the Blind and Handicapped legislation 41 U.S.C. 46-48.

To get the benefits of the program flowing as quickly as possible, it requires the program to be up and running

within 180 days. Also so the program does not get held up by the Appropriations issues, it requires the BIA to provide staff, administrative services and all other cost items from its existing resources. The actual costs should be relatively low: honorarium and per diem for two Committee members, a staff of 2-3 persons and funding for a non-profit group to assist tribes. The total costs should not exceed $300,000 to $500,000 and thus can be managed by the BIA out of existing resources at least for the first year or two.

Buy-Indian Amendments
to the Indian Self-Determination Act

I. SECTION 7 OF THE INDIAN SELF-DETERMINATION ACT IS AMENDED BY ADDING A NEW SECTION (c) AND A NEW SECTION (d)

New Section 7(c)

(1) On any contract for the benefit of Indians awarded by any federal agency, where more than 25% of the contract funds were authorized or appropriated for the benefit of Indians, preference, to the greatest extent feasible, in the award of that contract shall be given to Indian organizations and Indian economic enterprises that are 51% Indian owned and controlled, whose principle office is located on an Indian reservation, and whose workforce is at least 70% Indian, or a firm that is 100% Indian owned and controlled and whose principle office is not located on a reservation. (2) Further, the Secretary of the Interior may in his discretion, authorize the preferential award of any individual contract or category of contracts awarded by any agency within the Department of the Interior, pursuant to the provisions of this Section. (3) Whatever means of preference is used to comply with this section, the awarding agency shall insure that the contract price does not exceed the fair market price of the contract by more than 10%. (4) For the purposes of this subsection and Section 7(b) of this Act, the term "for the benefit of Indians" means that the contract furthers the Congress' special relationship with Indians, or that Indians are the primary

beneficiary of the contract and that any benefit to the general public is incidental. (5) The preference provided by this subsection shall take priority over any other procurement preference provided for by law except those relating to national emergencies. (6) The Bureau of Indian Affairs shall serve as the coordinating agency to promote consistent enforcement of this Section and Section 7(b) by the various federal agencies.

II. JUSTIFICATION FOR NEW SECTION 7(C) AND (D)

A. New Section 7(c)

Presently, as a result of the U.S. Supreme Court decision in Andrus v. Glover, the BIA may not use the Buy-Indian Act on facilities construction. In addition, the Court's decision in that case raised some questions about whether the Buy-Indian Act applied to contracts other than for traditional Indian items such as beads and blankets. The proposed language would correct both these problems. It would require Indian preference to the greatest extent feasible, for all direct contracts which were for the benefit of Indians, awarded by any federal agency and would include BIA facilities construction contracts.

A second problem with the present Act is that it only applies to the BIA and IHS. There are only a relatively few categories of direct contracts awarded by Federal agencies other than the BIA and IHS that are for the benefit of

Indians. But the effected agencies have had difficulty awarding them to Indian firms under any form of preference. For example, ANA, which awards technical assistance contracts to assist their grantees, was told by GAO that they could not award these contracts under the Buy-Indian Act. While not a major problem, it should be corrected and the proposed language does that.

The proposed language would also give the Secretary of the Interior the discretionary authority to use Buy-Indian on Interior contracts that are not for the benefit of Indians. For example, there are often Bureau of Reclamation or National Park Service facilities issuing contract on or near reservations and tribes have felt frustrated because those contracts have been award to outsiders, particularly since it is the Secretary of the Interior, not just the BIA, that is the trustee and thus has a special relationship with tribes and Indians. The proposed language would give the Secretary the discretion to award any Interior contracts pursuant to Buy-Indian when he so chose.

The proposed language does not instruct how preference should be given, e.g., bidding limited to Indian firms or open bidding with the award to the Indian firm if it comes within a certain percentage of the lowest non-Indian bid. Each has its place depending on the agency, nature of the contract, etc. However, the proposed language provides that whatever method is used, it should not cost the government more than 10% above

what it would be estimated to cost if no preference was provided. It is not always easy to determine precisely what Indian preference is costing, but this gives the agencies a ballpark figure to shoot for and caps the amount the Congress is willing to pay for use of the Buy Indian provisions.

The proposed language also address the question of the percent of Indian ownership that should be required to be eligible for Buy-Indian. Section 7(b) requires only 51% for subcontracts, but the BIA and IHS have required 100% for Buy-Indian prime contracts because they feel that a 51% figure is too open to abuse by fronts. There has been substantial abuse by fronts, but a tight 100% requirement has limited legitimate Indian firms' ability to grow. The proposed language seeks a middle ground by requiring 100% except for firms located on reservations and which has a workforce that is not less than 70% Indian on the assumption that even if the 51% reservation-based firm turns out to be front, at least it will be creating jobs and economic activity on a reservation.

The proposed language provides that the Buy-Indian preference will take priority over all other forms of preference, including Blind and Handicapped and Federal Prison Industries. It is believed that these two categories of preference should have the top priority for almost all federal agencies, but that for those limited contracts awarded for the benefit of Indians, where the government is carrying out its special relationship with tribes and Indians, the Buy-Indian

Act should take priority. For example, a tribal pen and pencil manufacturing company should be able to sell its products to the Interior Department and IHS, though it is precluded from selling to the rest of the Federal government by the Blind and Handicapped preference.

Lastly, the proposed language designates the BIA as the coordinating agency on Indian preference. Problems have arisen on 7(b) implementation because each covered agency adopted its own approach. In addition to creating confusion, the lack of coordination enabled or encouraged several agencies inadequately implement their 7(b) obligations, necessitating legal action against them. While the BIA would not have the authority to make an agency take action, the coordinating role will give the BIA a platform to promote consistency and adequate implementation.

PREPARED STATEMENT OF RONALD C. HALL

I. Proposed Amendment to the Indian Finance Act.

The National Indian Contractors Association supports the proposed amendment to the Indian Finance Act which allows sale or assignment of guaranteed loans and their security by the lender. Such an amendment should encourage lenders to participate in the guaranteed loan program by making the loan instruments marketable assets. No longer will guaranteed loans be a stagnant part of the lenders loan portfolio.

Current Bureau of Indian Affairs regulations place limitations on loan and security assignments and the use of proceeds thereof. While these conditions appear to affect only the lender, they constitute an impediment to loan acquisition by Indian borrowers. Removal of these limitations combined with the federal guarantee should make loans to Indian contractors an attractive endeavor.

Mere assignment or sale of the loan and security will not prejudice the underlying obligation of the borrower. Presumably, the borrower is bound by the original terms of the loan instrument and assignment should not alter those terms.

As with any other business, Indian contractors need to have money to make money. There are now a large number of Indian owned enterprises that have been in businesses for two to six

years. These people are constantly searching for contracts to bid and work to perform. However because of their limited loan capacity under standard loan criteria, many contractors quickly reach their borrowing limits. They must then see several opportunities for expansion pass by just out of reach. Perhaps with increased loan and security marketability, the private lending sector will re-evaluate the commercial practicality of providing guaranteed loans to Indian contractors.

II. Proposed Amendment to Section 7 of the Indian Self-Determination Act.

A. New Section 7(c)

The proposed language has several important contributions to operation of the Buy-Indian contracting program, but is not attuned to the character and needs of the Indian contractor. The program needs centralized coordination as proposed to allow uniform certification and reliable measurement of progress within the program. However, due to adaptations based on economic survival and growth, many viable Indian owned firms have had to move their offices outside of their reservation boundaries. Fronting is a prevalent problem which should not be condoned or encouraged at any level because the goal of Buy-Indian contracts is development of the Indian owned firm, not merely employment of Indians.

The first paragraph of proposed section 7(c) applies a 51% Indian ownership requirement to companies whose principal office is located on an Indian reservation, but makes companies

located off the reservation attain 90% ownership. The rationale given is that firms located on reservations should have lesser scrutiny in terms of being a front operation so long as 60% of the workforce is Indian. The trade off of Indian entreprenurial growth for Indian employment is not necessary. The National Indian Contractors' Association has always supported and sought development of the Indian workforce and works with Tribal Employment Rights OFfices (TERO). As an organization we perceive no problem with adhering to reasonable TERO requirements.

However, as an organization the National Indian Contractors' Association has been seeking strict review of Indian ownershp requirements to ensure that only bona fide Indian owned firms benefit from the program. The purpose of Buy-Indian contracting should be to develop the experience and qualifications of Indian entreprenurs. Each contract we perform not only helps us survive on a day to day basis, but provides us a record to rely on when seeking open market opportunities. We view the Buy-Indian program as instrumental in the process of becoming a competitive business in the mainstream.

Many if not most viable Indian owned contracting companies have moved their principal offices to off reservation locations for sound business reasons. In the growth process they have acquired an inventory of equipment that is in constant need of maintenance and repair. These Indian owned companies need access to repair services and supplies sometimes on a daily basis that can only be found in cities. The exception to this need to

move off-reservation applies to those contractors on reservations located adjacent to urban centers.

Also, the growth process of an Indian contractor reveals a need to be highly mobile. A contractor can not survive on projects located on one Indian reservation. They must move their crews and equipment from reservation to reservation and state to state to keep them productive and pay the bills. Especially in the northern part of the country and at upper elevations, construction is seasonal. When the time to work comes, the principal business location coordinates the crews as they go out and keeps the equipment in repair between jobs. Thus the need for an urban office location is critical to most contractors.

We perceive the threat presented by a 51% ownership requirement and the opportunity for fronting as substantial. Many of our members have been under bid by obvious front firms in the past, and fronts do take a large portion of our business. The crippling effect of fronts on Indian business development is great because the front assumes the daily operation of the project to ensure its profit.

A compromise may exist in this position. Front operations are mainly concerned with large profitable projects. They will not usually put the effort into projects under $100,000. However, many reservation owned and small contractors dream of the day they get a $100,000 contract. This is the extent of their operational capacity in terms of bonding and financing.

Without going into great detail at this time, the

National Indian Contractors' Association suggests that the following options be evaluated:

1. Allow 51% ownership for Buy-Indian projects under $100,000 in value.

2. Make ownership percentage increase incrementally with years of certification, i.e. 51% ownership for the first two years of Buy-Indian certification, 75% for the next two years, and 100% thereafter.

These options may be applied together to help small contractors get a start.

We support the remaining portions of the proposed Section 7(c) at this time. There certainly is a need for centralized coordination of the Buy-Indian program. Uniform certification for participants will do much to allow the highly mobile contractor community to bid on more projects. Uniformity should also mean stricter scrutiny of firms to eliminate fronts.

Thank you for inviting me to this hearing and for listening to the concerns of the National Indian Contractors' Association.

Sincerely,

Ronald C. Hall

PREPARED STATEMENT OF BAILEY S. BARNARD

Mr. Chairman and members of the Committee, My name is Bailey S. Barnard. I am Chairman and Chief Executive Officer of First Capital California Business and Industrial Development Corporation or CALBIDCO, a firm licensed by the California Banking Department specializing in making government guaranteed loans. I am also president of the National Association of Government Guaranteed Lenders (NAGGL), which represents banks and non-banks active in government guaranteed lending throughout the country. I would like to thank you for this opportunity to appear before the Committee and to recommend changes in the Indian Financing Act.

Background

NAGGL began in 1984 after being organized by five major banks in California for the purpose of mutual sharing of information on SBA loan regulations and the secondary market for SBA loans. NAGGL has rapidly attracted other bank and non-bank lenders who have similar interests in enhancement of government guaranteed loan programs. Currently NAGGL has almost 100 members nationwide representing commercial banks, savings and loans, non-bank lenders and other non-lender financial companies. NAGGL members are:

1. both large and small financial institutions who collectively are responsible for a substantial part of all SBA guaranteed lending an secondary market activity done nationally;

2. the broker/dealers and investors who are most active in secondary market for SBA paper;
3. local and certified development companies active in the SBA 502, 503 and 504 finance programs;
4. others who support small business interests including government officials and other banking and small business oriented associations.

NAGGL's primary mission is to build greater awareness among lenders and decision-makers in both the public and private sectors of the true benefits of government guaranteed lending programs, their contributions of job creation and economic growth, and to ensure that such programs are structured and administered effectively to facilitate lender involvement in this public/private partnership for the ultimate benefit of the nation's small businesses. NAGGL acts as a clearinghouse for information on government guaranteed loan programs and the secondary market for such loans.

Indian Finance Act P.L. 93-262/98-449 as Amended on October 4, 1984.

The Indian Finance Act has been a valuable source of credit for growing tribal and individual Indian owned businesses. The Act can, however, be greatly improved to enhance the availability of future financing for American Indian economic growth.

The SBA Act, as amended, expanded the financing opportunities to individual Indians for participation in the development of

reservation economies by increasing the guaranteed loan limitation from $100,000 to $350,000 and by permitting the making of direct loans or guaranteeing or insuring of loans to tribal members regardless of whether a tribe had a credit program.

The 1984 Act provided for the reactivation of the Indian Business Development Grant Program by authorizing annual appropriations beginning in fiscal year 1986 and increasing the amount of a grant from $50,000 to $100,000 for an individual Indian and to Indian tribes from $50,000 to $250,000.

From BIA guaranteed loan records, we have noted that from 1974 to 1984 the BIA made 176 loans worth over $136 million with only a 5.6% default rate. Given the need for economic and business development on Indian reservations, something this committee is well aware of, this is an acceptable cost to the government given the expected benefits. The program should be expanded and enhanced to allow for greater participation by the lender/financial community.

Indian Finance Act Recommendations:

1. Increase authorization under the Indian Finance Act to $500 Million Dollars in fiscal year 1988 and each year thereafter.
2. Allow lead lenders to include all regulated banks, savings and loans, non-banks, insurance companies and business finance companies. Make the BIA guaranteed loan fully transferable in the secondary market similar to the SBA loan guarantee program. The guarantee must be a

direct obligation of the U.S. Treasury and carry a "full faith and credit obligation."

3. Allow for a one time, up front loan fee rather than the current 1/2 point per month BIA fee. This would prevent null and void guarantees for non-payment of the fee.
4. Working with the Small Business Administration and using their loan program documents as a model, develop and agree upon common and standardized loan applications and agreements.
5. Allow "pooling" of BIA loans to enhance their sale in the secondary market.
6. BIA must guarantee timely payment of principal and interest which payment can be administered through the use of a fiscal and transfer agent to handle secondary market sales.
7. Increase the size of eligible individual loans to $500,000.
8. Using the SBA administered loan programs as a model delegate financial programs to the agency level, but expand and improve skills of agency credit staff.
9. Add the following new programs for Indian contractors:
   - Revolving line of credit program to meet short term credit needs.
   - Bonding (full surety) program to include: a) bid bonds, b) performance bonds, and c) payment bonds.

10. Add "full faith" guarantee behind BIA Letters of Credit to serve "in lieu" of bonding for federally funded construction projects.

Conclusion

It is our contention that these recommendations would enhance the Indian Finance Act programs by increasing lender participation through the creation of more standardized documentation and easier access to the institutional secondary market for BIA guaranteed paper. Such enhancements would improve the access to reasonably priced financing for qualified Indian owned businesses.

We would welcome the opportunity to work with the Committee and, again, appreciate the opportunity to present our recommendations to you.

I would be happy to answer questions that the Committee might have.

Thank you.

PREPARED STATEMENT OF SUZAN SHOWN HARJO

Mr. Chairman and Members of the Committee, on behalf of the membership of the National Congress of American Indians, I thank you for your commitment to finding solutions to the pressing problem of poverty in Indian country. In the past, policy decisions were made on a piecemeal and wholesale basis to subjugate Indian people, to separate us from our traditional resources and economies, to force us into foreign lifestyles and to keep us in a subservient posture, all in contravention of expressed policies of the national government and of treaties and other binding agreements with Indian nations. Indian governments and people have had to secure recognition of rights in virtually each generation, often at great physical and financial cost. More often than not, Indian governments and people have found that rights secured, affirmed and reaffirmed are subject to new challenge, especially in areas where we have an opportunity to make money.

The policy issue here is whether or not the United States will take positive, affirmative action to help Indian governments and people lift ourselves from a severe condition of poverty not of our own making. One way of contributing to the solution is to apply the "Buy Indian" Act across the federal government, particularly in those agencies with vast procurement needs. Our membership of Indian and Native governments and people urge the Committee to recommend as a forthright policy initiative that Congress require the federal agencies to contract with Indian governments and businesses on a preferential basis to meet their procurement needs. The discretionary "Buy Indian" Act for the Department of Defense has been law since 1981, and the Secretary of Defense has exercised his discretion only once in these six years because there are those in the Department who do not believe that they should help Indian businesses get started. We recommend that Congress require just that - a federal assistance initiative to help start Indian businesses and to make jobs available where they do not now exist. Would this be characterized by some as a bail-out? Undoubtedly so. However, the federal government has a history of bailing out cities, banking institutions, automobile manufacturers and other entities. The justification for taking this action for Indian country can be made with at least equal reason.

For the past year, NCAI's educational affiliate, the NCAI Fund, has conducted an outreach effort to promote business start-ups and jobs for Indian and Native veterans, who comprise the greatest pocket of poverty among the national veteran population. In this program, which is conducted under a grant from the Department of Labor, we have found that the singlemost obstacle to Indian veterans' business start-ups is lack of capital, and the major reason for high unemployment among Indian veterans is the lack of jobs in Indian country. A "Buy Indian" requirement among the federal agencies would help the situation of Indian veterans who have served with such distinction and dedication in the U.S. military, and would benefit Indian people generally.

In forging this initiative, we also urge the Committee to examine the recent record of the Department of Interior's application of the "Buy Indian" Act, especially to determine how many times the Assistant Secretary for Indian Affairs has exercised his discretion to waive the "Buy Indian" provision in requests for proposals. We recommend that this discretion be eliminated in the future, or that strict conditions for its waiver be set forth, together with prior notice to Indian governments and Congress when it is to be exercised.

The application of the "Buy Indian" Act that we recommend would not require an additional layer of bureaucracy, would not require the establishment of a new program and would not cost the federal government any new money. It would help start businesses in Indian country, would enhance existing businesses, would generate employment where few jobs now exist and would help develop an economic base for many tribes. We understand that the Administration is discussing a study of this matter. We have had studies. We now need solutions.

PREPARED STATEMENT OF JOHN R. WASHAKIE

My name is John R. Washakie, and I am Chairman of the Shoshone Tribe of the Wind River Reservation. Before I present my statement, which I submit for entry into the Record, I would like to thank this Committee for sponsoring today's hearing, and for allowing me to testify before you about the concerns our Tribe has regarding proposed amendments to the Indian Financing Act and the Buy Indian Act. I would like to briefly comment on the proposed changes to the Indian Financing Act before I direct the substantial portion of my testimony to the Buy Indian Act.

The ability of a lender to sell or assign existing loans to third parties for investment purposes has long been recognized as an economically sound method for increasing the amount of funds available for future development financing. In light of the complexity of the jurisdictional laws applicable to Indian reservations, many investors will not lend to Indians on reservations without a Financing Act loan guarantee. Thus, in a real sense, the amount of investment capital made available to Indians turns significantly on any limitations affecting such capital that may be contained in the Financing Act. At the present time, loans guaranteed pursuant to the Act may be sold only to regulated financial institutions. These restrictions limit the potential secondary market for such loans to a small portion of the investment community, with a consequent limitation on the amount of funds available for economic development. The proposed changes would expand the eligible pool of investors in Financing Act guaranteed loans, and thereby increase the likelihood that the loans will be sold. This, in turn, will increase the availability of funds for tribal economic development.

A reduction in tribal unemployment, currently hovering around 70% at Wind River, and the stability of tribal economies, depends on the development of additional economic enterprises. Such development is a priority of the Shoshone Tribe. Historically, however, this development has been limited by inadequate tribal access to capital funds for business development. The loan guarantee program has gone a long way towards addressing this problem. The needs of the reservation plainly are still acute, however, and the availability of increased funding sources will be crucial for the development of sound businesses. The Shoshone Tribe, therefore, supports allowing guaranteed loans to be sold or assigned without restriction. In addition, an increase in the ceiling level for the guarantee program will ensure the availability of a much needed source of funds.

The remainder of my testimony concerns amendments to the Buy Indian Act.

The President, in his 1983 Indian Policy Statement, professed that this Administration would work to "create a more favorable environment for the development of healthy

reservation economies," and similarly "remove the impediments to economic development and encourage cooperative efforts among the tribes, the federal government and the private sector in developing reservation economies" by removing barriers restricting tribal contracts and reducing regulations hindering economic growth. The Shoshone Tribe believes that the proposed amendments to the Buy Indian Act will help spur the economic growth of our reservations, and allow us to reduce the tremendous unemployment which hinders our economic development.

The Shoshone Tribe maintains a lasting interest in the Indian preference provisions (Section 7) of the Indian Self-Determination and Education Assistance Act, P.L. 93-638, and supports bill language strengthening these provisions. We urge the Committee to carefully construct new preference language. In particular, the Tribe would like to see the expansion of P.L. 638 contracts to federal offices as well as the Bureau of Indian Affairs ("BIA") and the Indian Health Service ("IHS"), and would like to obtain support for Tribal enterprises or Indian-run businesses to operate as a conduit with other businesses for the purposes of reservation economic development. The Tribe, however, has questions on Buy Indian amendments which concern the percentage of an organization that must be Indian owned and controlled in order to qualify for Indian preference, the Indian percentage of an organization's workforce and its location on or near the reservation.

The Shoshone Tribe calls for strengthened procurement provisions in the Buy Indian Act in order to help answer the questions which have lingered since the Supreme Court decided in Andrus v. Glover Construction Company that the Buy Indian Act was not of itself authority to avoid the provisions of the Federal Property and Administrative Services Act requiring open competition for most federal contracts. However, there must be careful construction and execution in avoiding Glover to ensure the real obstacles to expanded business activity on Indian reservations are addressed. The Tribe has several suggestions in this regard.

First, when attempting to define an Indian economic enterprise, the distinction has been made between enterprises located on-reservation and enterprises located off-reservation. Businesses located on-reservation can have a lower percentage of Indian ownership and control and still qualify as an Indian economic enterprise. Many reservations do not, at the present time, have an established infrastructure to meet the needs of prospective businesses which would benefit the tribal economy and reduce unemployment. The infrastructure often exists, however, in communities located adjacent to a reservation.

The Buy Indian amendments should include language allowing for a business located near, but not on, a reservation to meet the same requirements as an enterprise located on-reservation. Such language would advance the interest of the amendments to

increase economic and employment opportunities for this Nation's Indian population since, as the Committee well knows, Indian country, over which tribes exercise jurisdiction and in which Indians typically constitute the majority population, includes both reservation and trust lands. In addition, the lower percentage of ownership and control would allow for the flexibility needed to attract business entities with the needed expertise and technical support to locate in rural areas. The requirement that a percentage of the workforce be Indian will ensure that the employment goals can be met. Likewise, the requirement that Indian businesses eligible for the Act be located near an Indian reservation will prevent the draining away of business expertise and investment from the reservation area. An alternative way to ensure the Buy Indian Act benefits all Indians living on or near a reservation is to extend its application to all of Indian country.

While proposed amendments to expand and strengthen the Buy Indian Act are essential, a need exists in the preference statutes for tribal bonding authority as a provision for obtaining federal procurements. Due to the inability of tribal members and tribal contractors to leverage collateral in order to obtain the guarantee that bonding provides, many tribal contractors have been frustrated by a process by which they lose potential contractors which would employ a significant number of Indian employees simply because they are unable to obtain adequate bonding. The Shoshone Tribe requests the Committee to authorize the use of the Indian Financing Act loan guarantee and insurance fund to cover performance bonds or other bonds needed by tribal contractors as a provision for their obtaining federal procurements.

Today, as in the past, the fundamental economic problem on Indian reservations is the crippling unemployment of tribal members, which is a direct result of the lack of on-reservation commercial and industrial enterprises. This problem has not only prevented the enhancement of the reservation standard of living, but has limited many prospective employees from obtaining practical training and work experience, and has precluded the development by entrepreneurs of tribal businesses. Thus, many talented Indian entrepreneurs and employees seek training and opportunities a great distance from the reservation, where commercial and industrial employment are available. The present Buy Indian Act has provided tribes and tribal operations with the opportunity to train tribal members, and help them develop the financial and managerial skills essential for them to become independently successful. The proposed amendments to the Act will serve only to strengthen and build on this success.

When the Congress ratified P.L. 93-638 in 1974, an Indian preference provision was included in Section 7(b) which stated that Native Americans and Native organizations would receive

preferential treatment in order to participate in training and employment programs for the administration of P.L. 638 grants and contracts. Since that time, this provision has been narrowed so as to include only those P.L. 638 programs administered by the BIA and the IHS. In light of this restriction, several tribes and Indian organizations obtained a rider to the FY 1982 Appropriations bill for the Department of Defense authorizing the Department to procure contracts with Indian tribes pursuant to Buy Indian provisions identical to those applicable to the Department of the Interior. To implement this authority, the Department of Defense ("DoD") and the Small Business Administration ("SBA") in 1983 agreed to a Memorandum of Understanding ("MOU") to "facilitate the development of Indian-owned small business utilizing DoD procurements through the SBA 8(a) procedures." The 8(a) procedures were designed to serve the needs of minority businesses owned by individuals and located in populated (urban) areas. This has prevented many qualified Indian enterprises from taking advantage of 8(a) benefits. The Shoshone Tribe strongly recommends amending the Buy Indian Act to cover all agencies, and to provide for a streamlined process tailored to the factual circumstances under which tribal enterprises and Indian businesses operate. This might be accomplished by giving the BIA the authority, in consultation with other agencies, to implement uniform guidelines for government procurement from Indians.

The strength of the Indian preference provisions of the Buy Indian Act is due in part to the business options it provides Indian tribes. It allows tribes to determine a product it can successfully market, and provides them with the incentive to develop that product free from the encumbrances and problems associated with open bidding. In addition, it provides them with a guarantee that it will be purchased by a contractor. Tribes which have an abundance of a particular resource, or service, can market their products with the support of the Buy Indian Act. The Shoshone Tribe wholeheartedly supports these amendments, knowing that the current approach of DoD and anticipated restrictions in the BIA's soon to be published Buy Indian Act regulations ignore the realities in Indian country. Those realities include scarce development capital, scarce management expertise and crippling unemployment. Clearly, extraordinary measures are needed to catalyze business development on reservations. The Tribe supports the combined approach of (a) removing many of the stringent contract requirements that interact to prohibit tribes from coventuring

with non-Indians whose capital and management expertise is often desperately needed, and (b) creating a special agency whose mission is to promote tribal contracting.

The livelihood of our Tribe, in addition to managing oil and gas leases, relies to a great extent on the cattle which populate the beautiful rangeland of the Wind River Reservation. We would like to use our prime cattle in the development of a tribally-managed and operated meat packing plant which would provide the DoD and other federal agencies with a source of prime beef, and the Tribe with a sound employer for our people. Further, the Tribe would be able to train tribal members in the various aspects of the operation of a packing plant, and over time this management training would help the Tribe develop additional enterprises throughout the reservation. This manufacturing and marketing of natural resources, rather than solely raw materials, is an area our Tribe has been interested in pursuing for quite some time. With the adoption of the proposed amendments which meet the concerns expressed in the Supreme Court's decision in Glover, the Shoshone Tribe will be able to obtain preference contracts with federal agencies, and thereby help relieve the chronic unemployment problem at Wind River and advance us towards economic self-sufficiency.

The Shoshone Tribe urges the Committee to seriously consider the aforementioned amendments to the Indian Financing and Buy Indian Acts, as they will serve to foster economic development throughout Indian country. This concludes my prepared statement, and I would be happy to answer any questions of the Committee.

PREPARED STATEMENT OF JOHNNY R. THOMPSON

Chairman Inouye, members of the Committee, thank you for allowing me to testify and submit a statement for the record on this most important issue. I would also like to thank you on behalf of the Navajo Nation and our people for your focus on economic development during the 100th Congress. All Indian people need for you to be successful. In that regard, one of the issues before us today, the Buy Indian Act, and such other legislation pending before your Committee, S.788, the proposed Indian Economic Development Act, and S.721, the proposed Indian Development Finance Corporation Act, need to be passed as expeditiously as possible.

THE BUY INDIAN ACT

The Buy Indian Act was originally passed in 1910 to assist in the development of tribally owned enterprises, and to assist in the development of a self-sustaining local private sector that would aid in tribal development. Currently, both the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) are encouraged to award contracts to qualified Indian contractors to the "maximum extent possible".

The Navajo Nation believes Indians should be treated preferentially in the awarding of contracts and subcontracts that the Government enters into. Such a belief is totally consistent with the Federal trust responsibility of providing for the education, health and welfare of Native Americans. It is also consistent with the Navajo people's top priority: the creation

of a thriving private sector economy on our Reservation. In order to secure the necessary start-up capital -- especially in the Reservation environment -- which is still an uncertain one to many outside investors -- it helps a great deal if a tribal entrepreneur can point to a secure initial source of demand as a foundation for the business. This is a key benefit the Buy Indian Act gives us. Just as your proposed Indian Development Finance Corporation would provide the all-important seed-capital for business start-up, the Buy Indian Act truly provides the "seed market" upon which a talented, energetic Indian businessperson can build successfully.

I would like, however, to recommend several changes in the Federal contracting and procurement laws which, if implemented, would greatly assist Tribally owned enterprises and provide many more jobs to Indian people.

Eligibility of an Indian Owned Firm

Under current law, different agencies such as the Bureau of Indian Affairs, the Defense Department and the Small Business Administration 8(a) operate their procurement and set-aside programs differently. I believe that certain definitional inconsistencies between the SBA Section 8(a) minority enterprise program and the "Buy Indian" programs should be resolved, in order to have both programs reach their full potential for Indian people.

The first issue involves the definition of "disadvantaged." An SBA 8(a)-certified firm must be owned by socially and economically disadvantaged individuals generally, and I believe that in the case of Indian people, "social disadvantage" is presumed but "economic disadvantage" is not. No such showing need be made by Indian business owners seeking certification as an Indian/Alaska native enterprise eligible for "Buy Indian" set-asides.

A second issue relates to the degree of Indian ownership and control. An 8(a) firm must be at least 51 percent-owned and managed on a day-to-day basis by one or more disadvantaged individuals. In contrast, a "Buy Indian" certified contractor must be 100 percent Indian-owned and controlled. (An "Indian Subcontractor" eligible for preferential treatment under P.L. 93-638 contracts may be 51 percent Indian-owned but need not be 8(a)-certified).

A major substantive drawback to the 8(a) process is its required showing of economic disadvantage by the Indian individuals owning and managing the applicant firm. This is doubly ironic, given that some 100 percent Indian owned firms, certified and listed on the BIA "Buy Indian" roster, are still not automatically eligible to participate in the Department of Defense's own "Buy Indian" initiative which has, as an additional condition of eligibility, that they be 8(a) certified. These definitional inconsistencies pose a major hurdle to Indian

businesses attempting to participate throughout federal procurement process.

We believe that careful thought should be given to creating a single certification process for Indian businesses. This government-wide standard ought to be written to reflect, not ownership, and/or "control" as the determinants of eligibility, but the extent to which the firm actually benefits the economic circumstances of a collective grouping of Indian people. Thus, relevant concerns would include how many Indians the firm employs, whether its operations are based on a reservation or in another Indian community, and to what extent the firm's gross revenues and net profits will serve to generate additional economic activity on that reservation or within that community. The Navajo preference laws focus a great deal on such criteria.

Under such a formula, the SBA requirement of 8(a) certification of ownership by economically disadvantaged "individuals" would be preempted as would the Buy Indian ownership requirement. So would the requirement of management by "economically disadvantaged" persons, freeing us to seek the very best talent possible for the job.

All Federal Agencies Should Adopt the Provisions of the Buy Indian Act

As mentioned before, such preferential status in awarding contracts only applies to the BIA and IHS because these contracts

primarily assist Indian people. However, there are many other agencies, such as the Department of Defense, which can and should provide preferential status to Indians in the awarding of contracts and most importantly, subcontracts. Most every year Congress inserts language into the Department of Defense's appropriations bill. Since FY 1983 Congress has included language that states, "so far as may be practicable Indian labor shall be employed and purchases of the products of Indian industry may be made in the open market at the discretion of the Secretary of Defense."

Given that the Department awards twelve million contracts a year valued at about $120 billion, such language should be inserted into an authorization bill so that it is permanent.

The Navajo Nation has great experience in defense contracting. General Dynamics, one of the country's largest prime contractors, has been on the Reservation for 25 years and has expanded its operation. We would obviously like to do more defense contracting and subcontracting and permanent DOD preference might give us that opportunity.

Other agencies such as the Bureau of Reclamation and the National Park Service also executes many contracts in proximity of Indian reservations. Many times Indians are not considered in the awarding of such contracts. The Secretary should have the authority to direct these contracts to Indian firms. The

criteria for awarding such contracts should be changed so that the provision that states Indians should be awarded contracts whose products are beneficial to Indians, is amended to one that allows Indians to participate in contracts or subcontracts they could benefit from economically.

Preferential Status/Competing in the Marketplace

I do not want members of the Committee to think we believe our preferential status should be granted without Indian firms competing in the marketplace. Obviously, there must a ceiling on cost allowances for Indians. This may be done in either of two ways. We feel that given our stage of development and current needs, 10 percent above the estimated competitive cost of a contract would be a reasonable amount Congress should be willing to condone for contracts registered under the Buy Indian Act. This 10 percent would compensate for the higher prices that Indian enterprises pay for compensation required for finished goods because of our geographic isolation of the reservation -- which lessens our access to certain goods -- and our present inability to exploit economies of scale that other entities have developed over the years.

Another method of establishing competition would be for the contracting entity to establish a ceiling price on the execution of the contract and then to open it up for bid to firms certified to compete for such contracts. The Navajo Nation currently utilizes such an approach.

SBA Should Establish A Division Specifically To Focus On Indian Needs

An entity within the Small Business Administration should be formed to provide assistance to Indians and tribally owned enterprises. Such a division would be in a position to provide central coordination of SBA's programs, such as its 8(a) program, with delegations to each region. The division would also be a major source of technical assistance to tribal businesses and could provide them with a base of guidance and expertise tailored to Indians unique status and needs. In addition, such a division would help to assure that tribal and Indian businesses receive appropriate priority within the Federal Government, and could assist in addressing the procurement problems previously described.

Indians Must be Given the Opportunity to Work with Prime Contractors

I feel that a common problem for Indians trying to take advantage of procurement and contracting opportunities, is the inability of Indian business to gather timely procurement "intelligence" -- what contracts are to be offered and how to compete with others with more expertise. As the 8(a) process is still new to many Indian businesses there is a need for an outreach program within the procurement process to inform Indian businesses of such opportunities. Such a program needs to be incorporated in all agencies that do contracting, and should be institutionalized within the procurement processes.

The Federal Government Must Work With Tribes Not To Undermine Tribal Laws

The Federal Government should work with the tribe to insure that the letting of a procurement contract is consistent with specific tribal preference. For example, the Navajo Nation has its own Navajo preference law. We believe that if a contract will have an impact on our reservation economy, it should be awarded to a Navajo firm to benefit Navajo people. I am sure that many other Indian tribes have similar concerns.

CONCLUSION

I believe these changes are needed to improve the contracting and subcontracting opportunities for tribal entrepreneurs and small businesses. Obviously, the most important changes are to broaden the contracting opportunities from BIA and IHS to all agencies and to standardize the various eligibility requirements of the existing programs.

Thank you very much for this opportunity to appear before you and thank you, once again, for placing these and other economic development issues so high on the Committee's agenda. I would be very pleased to answer your questions.

PREPARED STATEMENT OF FREDRICK C. COOPER

The purpose of this paper is to present some insight on the recent application of rules and regulations by several agencies for procurement of services under the Buy Indian Act, 25 U.S.C. 47 and 41 U.S.C. 252(c)(15). The perspective covers direct procurement of professional services by the Bureau of Indian Affairs, Health and Human Services and subcontracting by recipients of Federal funds from these agencies plus the Department of Education and Housing and Urban Development. Comments will be addressed to procurement activities occuring during the period of 1982-1987.

While current rules and regulations are by in large receiving reasonably broad and proper application, inconsistencies in their use by contracting officers do occur on a regular basis. These create economic hardship on companies attempting to comply with the the regulations and reflect poorly on the intent of the Act. Notable deficiencies include:

Waivers or exceptions to the Act's provisions so not to require Buy-Indian Contracting have been granted without sufficient documentation.

Indian Preference subcontracting provisions for utilization of Indian/Alaska Native economic enterprises have not been widely enforced or monitored.

The intent of the enabling legislation to assist in the development of Indian/Alaska Native economic enterprises is being restrained by specific provisions which are outdated or incompatible with present day business practices.

Buy-Indian contracting has been circumvented in certain programs through transfer of funds between Federal agencies even though appropriations were for Indian programs involving trust responsibility of the Department of Interior.

The tragedy occurs when Indian economic enterprises try to take advantage of such preferences, make financial investments, establish capabilities and then be forced to suffer downturns due to waivering enforcement or inconsistencies in application of the procedures.

BUY-INDIAN CONTRACTING BY THE BUREAU OF INDIAN AFFAIRS

Professional services are frequently sought by Area Offices, Facilities Engineering, Division of Transportation and the Central Office. BIA agencies procure services of Indian firms under Rules initially published in the Federal Register on October 8, 1982. They were never issued as final rules. 41 CFR 14H-71.1 defines Indian/Alaska Native Economic Enterprises as being for profit or non-profit organization which are 100 percent owned by Indian(s)/Alaska Native(s). A definitive program has been established for selection of a contractor if the project need is not first subjected to a waiver granted due to: non-availability of competition or technical quality, delivery or quantity of service cannot be met or contract acquisition cost would be unreasonable.

The BIA Division of Transportation has an excellant record of utilizing the Proposed Rules for seeking Indian firms. In FY 86 over $2 million in A/E contracts were awarded to Indian firms out of the $98 million budgeted for the Indian Reservation Roads Program. This is about one third of the cost of professional services; the remainder being accomplished by Federal employees. When Area engineers cannot deliver a project, several of the Area Offices have avoided the procurement process and contracted directly with the Federal Highway Administration for design of road and bridge projects on reservations. There has also been times when the FHWA seeks out work from the BIA when their design groups have a lack of work. In 1985 the Western Bridge Division of FHWA designed two bridges on the San Carlos Indian Reservation for the Phoenix Area Office. While the Contracting Officer determined that two Indian firms were non-competitive due to cost, the Western Bridge Division ultimately required the same amount of funds. There is no evidence that FHWA has sought Indian firms when outside services, such as surveying and mapping, are procured for these projects.

A number of Area Offices, particularly Albuquerque, allow small businesses to compete with Buy-Indian firms for A/E services involving water resource planning, irrigation engineering and water rights investigations. Historically, there have not been qualified Indian firms in this skill

category. In 1986 an appeal was lodged on one such project for the Acoma and Laguna Pueblos where an award was given to a small, non-Indian firm without allowing opportunity to negotiate an acceptable contract with Indian firms which also were qualified. The Area Solicitor determined that such negotiations should have taken place and these firms were given the chance to submit a best and final offer. The procurement process in this case was unfortunately delayed over eight months.

BIA appropriated funds for water rights investigations can be and frequently are transfered to the Justice Department which in turn retains professional services. There is no evidence that the Justice Department has ever sought to use qualified Indian firms even though a transfer of trust responsibility occured.

Agency transfer of funds also occurs in the planning and design of Indian irrigation projects. The Bureau of Relcamation has assumed the responsibility for this service and has never acknowledged that trust responsibility carries Buy Indian Act provisions. Furthermore, the funds might be more effective in economic development if acquisition of Indian firms or tribal contracting were allowed. This activity may be a good candidate for the A76 processs.

Facilities Engineering has developed a very thorough program to certify and monitor both 100 percent and 51 percent Indian-owned firms. The 51 percent certification is used for monitoring of subcontracting opportunities at the solicitation stage. In the last three fiscal years nearly all contracts for A/E services by FES have been awarded to 100 percent Indian firms. However with award of a contract to a Tribe to perform similar services, there is no evidence that efforts are made assure utilization of Indian firms as subcontractors.

A recent award of a contract to the St. Francis School District on the Rosebud Reservation to design a new school resulted in selection of a non-Indian architect with no Indian firms being solicited as subcontractors. With no reflection on the policies of the Tribe, this half million dollar contract will have no economic benefit to Indian enterprises.

BUY-INDIAN CONTRACTING BY INDIAN HEALTH SERVICE

The Indian Health Service enacted Buy-Indian Act regulations on July 19, 1983 in recognition of transfer of health program responsibility from the Department of

Interior in 1955. Since that date, to the knowledge of this writer, all procurement of professional services by IHS has resulted in awards to Indian firms. Again, the IHS rules are well developed and consistently applied to solicitations. 41 CFR Part 3-4.5703 requires that Indian ownership be 100 percent and Indian Preference be incorporated in contracts for purposes of employment and subcontracting.

INDIAN PREFERENCE IN DEPARTMENT OF EDUCATION PROGRAMS

Under the Department of Education's 815 funding for schools on reservations, there is no visible effort made to utlize Indian Preference. Recent projects in Harlem, Montana and Taholah, Washington resulted in contracts with non-Indian architects. While qualified Indian firms were eligible to compete, no evidence of preference was noted in prime contracts or subcontracting. The 815 program represents the worst offender to furthering development of Indian econ mic enterprises.

INDIAN PREFERENCE IN THE HUD INDIAN HOUSING PROGRAM

The Office of Indian Programs of HUD has been able to fund the construction of around 2000 units of housing per year on reservations for the last several fiscal years. This represents about $6 million per year in professional services for design, lot surveys, soils and quality control testing. While over 80 percent of the design work has been contracted to Indian economic enterprises, only 50 percent of the professional services were by Indian firms since none offer soils or materials testing. The percentage is expected to decrease in FY87 and FY88 due to changes promulgated by HUD for applying Indian Preference.

New rules governing applicability of Indian Preference for the HUD-assisted Indian housing program were issued on January 3, 1986. These rules permit open competition with non-Indian firms. Indian Housing Authorities are expected to apply a rather arbitrary qualification rating program to interested firms. Section 7(b) of PL 93-638 still applies for employment and subcontracting but it is not monitored or enforced by HUD.

Indian economic enterprises which are 51 percent Indian-owned are permitted to be eligible for contract services required by the Indian housing program.

THE FUTURE OF INDIAN PREFERENCE

For Indian Preference to succeed in encouraging new business startups and developing strong Indian Economic Enterprises which are then able to compete in open market opportunities, weaknesses of the Program need to be dealt with in a number of ways.

First, Agency contracting officers must consistently require Buy Indian contracting and Indian preference in employment and subcontracting. To allow waivers on the basis of lack of qualified firms or competition is to admit defeat of the program. Only through adequate volume of work will Indian Economic Enterprises be formed or encouraged to grow and increase their capabilities.

Secondly, there is a substantial market for Indian firms in the subcontracting of services. The provision of 7(b) needs to be enforced and monitored in every contract occurance just as minority and disadvantaged business enterprise utilization have been in Federal Contracting. Subcontracting offers one of the best opportunities to new businesses since they can learn from the prime contractor. It also encourages diversity in available services.

The third area where substantial gains could be made in availability of contracting opportunites for Indian Economic Enterprises is to assure compliance of Buy-Indian regulations to programs funds which are transferred from the Department of Interior, Bureau of Indian Affairs, to other Government agencies. In past years large amounts of funds have been transferred to the Department of Justice, Bureau of Reclamation and Federal Highway Administration. Promulgation of rules and procedures similar to those of the Indian Health Service should be given immediate priority.

INDIAN OWNERSHIP REDEFINED

Promoting the economic development of Indian owned businesses has become a major element of efforts aimed at self determination and self sufficiency. The current Indian Finance Act and the proposal for an Indian Development Finance Corporation, as included in S.721, attest to this interest. Continuing efforts to promote and facilitate stong tribal economies and Indian/Alaska Native Economic Enterprises are badly needed.

One important objective is to develop consistent policies and regulations which allow a tribal or Indian

owned enterprise to be recognized and compete in the private sector along with non-Indian businesses.

Retention of 100% Indian ownership under the Buy Indian Act is one provision which is no longer consistent with other current programs. It should be revised to include the same language as the Indian Finance Act.

In today's competitive market, firms which are successful over the long term must be well managed, have business plans and be financially sound. This will require the flexibility to allow partial ownership by non-Indian corporations and individuals or even joint ventures. Private sector capital and marketing approaches are then infused into Indian businesses. Tribal ventures and Indian businesses historically have been "capital poor." Their survival will be strengthened by allowing partial non-Indian ownership.

SUMMARY

Current rules and procedures governing implementation of the Buy Indian Act have been beneficial in assisting new Indian/Alaska Native Economic Enterprises. Further effort should be made to reduce waiver of the provisions and the transfer of funds without use of the Act. The Buy Indian Act should be revised to permit 51 percent Indian ownership to be consistent with other legislation and rules. Indian preference in subcontracting lacks sufficient monitoring.

Dr. Fredrick C. Cooper is an enrolled member of the Shoalwater Bay Indian Tribe and has owned his own professional services business since 1976. His business has been actively involved in many Federal programs serving Indian reservations plus undertaking contracts directly for tribes. His firm has worked on over 150 Indian reservations, rancherias, reserves and Alaska Native corporations. The firm also works in the private sector.

National Indian Contractor's
Association
1881 9th Street
Boulder, Colorado 80302
303-443-1683
May 13, 1987

United States Senate
Select Committee on Indian Affairs
Washington, D. C. 20510-6450

Senator Daniel K. Inouye, Chairman

Re: Additional comments for the record on behalf of the National Indian Contractor's Association relative to Hearing of the Select Committe on Indian Affairs, conducted on April 29, 1987. (Proposed changes to the Buy Indian Act).

Dear Senator Inouye and members of the Committee;

We were pleased to be invited to offer our comments on the proposed changes to the Buy Indian Act during your hearing of April 29, 1987. We thank you for that opportunity. As a result of that hearing, we are anxious to offer further commentary regarding the proposed changes to the Buy Indian Act. We are asking that these additional comments be included in the record.

Our Association strongly opposes the suggested change from the present 100% Indian ownership and control requirement to something less as suggested by Mr. Dan Press in his Buy Indian Amendments to the Indian Self-Determination Act. Our position is that particular amendment would undercut many legitimate Indian contractors who have gallantly survived through the "Glover era" and who are managing to get back on their feet. It must be remembered that the Buy Indian Act is presently used by the Bureau of Indian Affairs for road construction projects only. Indian Health Service uses the Act for construction of sanitation facilities and various service related contracts.

Since the BIA has been authorized by Congress through the Surface Transportation Assistance Act of 1982, to use the the Buy Indian Act when contracting for road construction, we have seen a substantial increase in the number of Indian Contractors. At present we have over 400 member firms on our mailing list. And yes, there have been some abuses of the system by those who would take advantage of that situation. Our Association, however, has repeatedly urged stronger enforcement of regulations pertaining to screening, certification,

and prequalification of "certified Buy Indian" contractors.

Because the the BIA has only been able to use the Buy Indian Act for the construction of road projects, since 1982 (post-Glover) implementation of the Act has been inconsistent, sporadic and sort of "jerky". The BIA will be the first to admit to such problems. However, progress has been made and is being made insofar as uniform implementation of the Act by the BIA and participation of genuine, certifiable, legitimate Indian Contractors. Although the BIA has been authorized to use the Buy Indian Act since 1982, (post-Glover) statistics provided by the BIA's Department of Transportation reflect use of the Act starting FY 1984 through 1986 as it was only authorized by the Surface Transportation Assistance Act of 1982 which expired on October 31 of 1986. However, since recent passage of the Highway Bill by Congress, the BIA is using the Buy Indian Act to contract for road contruction projects.

The point is that since Glover, the BIA has only had three years of experience with the Act. We believe that it is premature at this point, to change a major part of the Act in the face of the real progress that has been made during the three short years of implementation.

We speak of progress, not perfection. Let us point to some areas of progress:

1. The primary contributing factor for abuse of the Buy Indian Act has been the requirement on the part of the government for performance and payment bonding as required by the Miller Act. Often times, legitimate Indian contractors have found it nearly impossible to have access to the bond market for a host of reasons, including jurisdiction, trust status of some of their assets, etc. However, as a part of the re-authorization of the Indian Finance Act of 1984, Congress specifically authorized the Secretary, when contracting with Indian firms to accept other forms of security in lieu of Miller Act bonds. This is real progress toward addressing the needs of legitimate Indian firms. It will also serve to eliminate those "front" operators who can structure deals with someone with access to the bonding markets.

Additionally, included in recently introduced S. 721, "Indian Development Finance Corporation Act" is language that proposes authority to guarantee bonds. Again, this is real progress.

2. An Indian owned and controlled bonding company has emerged that recognizes the special needs of Indian contractors and has designed a program that addresses the particular needs of Indian firms. This firm has developed the capacity to meet the bonding needs of Indian country. This is progress in the right direction and the results of that progress will become evident within the next few years.

3. The recent bid lettings by the BIA and the IHS, in several instances indicate broader participation by more Indian firms with increased competition. This increased competition by legitimate Indian firms with access to bonding is resulting in lower costs for the government and more "real" employment for Indian people. This is progress.

Verification of Data

A very serious problem exists insofar as collection of verifiable data with regard to implementation of the Buy Indian Act and participation of Indian firms in the Act. There exists a general opinion that there are only a "handfull" of certified Buy Indian contractors. Most of these are seen as "fronts" that glean a percentage off the top of a contract, subcontract the majority of the work to a non-Indian firm, and employ very few Indians in the process. This opinion not only applies to Indian firms, but it applies to the entire Minority Business Community. In Indian country, this opinion seems prevelant amongst Indians and non-Indians alike.

The lack of verifiable data poses an extreme hardship on those legitimate Indian firms who have built their respective businesses honestly, with hard work and dedication to the integrity of the Buy Indian Act. Yet, in spite of their efforts, they are presumed to be "rip-offs" because the data is not available by which they can defend themselves. We know that there are those few who do abuse the system. Those few, tragically, are held up as examples of Indian firms. We desperately wish that those who are responsible for implementing the Act would do the job that they are paid to do.

Is it possible for this committee to demand the collection of this data? It seems unlikely that changes to legislation affecting so many people would be adopted without the data to support those changes.

Data that we do Have.

We have been able to acquire some data from the BIA's Department of Transportation. The data is skimpy, but, does provide some insight. It only applies to BIA Department of Transportation.

Fiscal Year, 1984

Total Dollar contracted with Indian Firms:	$59,137,025.00
Total Dollar contracted with Non-Indians:	15,528,263.00
Total new jobs created by Indian Firms:	1,216
Total dollars expended by Indian firms for employment (assume 25% of total contract is labor).....	$14,784,256.00

Fiscal Year, 1985

Total Dollar contracted with Indian Firms:	$49,358,304.00
Total Dollar contracted with Non-Indians:	9,452,893.00
Total new jobs created by Indian firms:	884
Total dollars expended by Indian firms for employment (25% of total contract is labor):	$12,339,576.00

Fiscal Year, 1986

Total Dollar contracted with Indian Firms:	$49,706,530.00
Total Dollar contracted with Non-Indians:	3,939,544.00
Total New jobs created by Indian firms:	761
Total dollars expended by Indian firms for employment(25% of total contract):	12,426,632.00

Summary for three years (Fy 84,85,& 86).

Total Dollar contracted with Indian Firms:	$158,201,859.00
Total Dollar contracted with Non-Indians:	28,920,700.00
Total New Jobs created by Indian firms:	2,861
Total dollars expended by Indian firms for employment: (25% of total contract)	39,550,464.00
Total dollars expended by Indian firms for employment of Indians. (A conservative figure is 78% of total labor force is Indian):	30,849,361.00

It should be noted that the Department of Transportation, BIA, did not have any figures on the jobs that were created by Non-Indian firms that did business with their department.

Philosophy

It is the philosophy of the National Indian Contractor's Association, with respect to the Buy Indian Act, that the Act is intended to be a vehicle by which the government would contract with Indian firms, in a special set of circumstances, that would enable the firms to develop economically, technically and competitively. This development contributes to a stable economic environment, provides long term employment for the employable, provides role models for young Indian people with aspirations toward business, and enhances the atmosphere for commerce in Indian Country.

We believe that in the past three years, Buy Indian Contractors doing business with the BIA's Department of Transportation, have made substantial progress. They have made an investment in heavy equipment, personnel, and related resources. They did so believing in a system that would reward those who chose integrity over opportunism. They did so believing in a system that would eventually "weed out" those who abuse the system. They did so believing in a system that was created to give "First Generation" businesses, for the most part, a chance to compete amongst their equals.

Conclusion

If it is decided that a reduction from the 100% ownership requirement is to be, we strongly urge the membership of this committee to reserve the 100% ownership and control requirement for firms doing business with the BIA as allowed by the Surface Transportation Assistance Act. Perhaps a mixed ownersip for firms engaged in large scale manufacturing or other such ventres does have merit. We do not believe this approach applied to the construction industry in Indian country would be beneficial.

We thank you for this opportunity. We are hopefull, indeed, that you will take our comments to heart and mind. Please incorporate them with the previous testimony submitted on April 29, 1987, before your committee. Thank you.

Sincerely yours,

Edward M. Danks

Edward M. Danks
President

Letter in Opposition to the
Proposed "Buy Indian" Amendments

In Andrus v. Glover Construction Company, 446 U.S. 608 (1980), the Court held that the Buy Indian Act does not authorize the Department of the Interior's Bureau of Indian Affairs (BIA) to enter into road construction contracts with Indian-owned companies without first advertising for bids pursuant to Title III of the Federal Property and Administrative Services Act of 1949 (FPASA). The United States Supreme Court noted that the Court of Appeals for the Tenth Circuit was divided on the issue of whether the Buy Indian Act authorized the BIA to prevent a non-Indian corporation engaging as a general contractor in roadbuilding, an opportunity to bid on a BIA project. 591 F2d 554.

The Court of Appeals held that the Buy Indian Act standing alone had been pre-empted by the advertising requirements of the FPASA with respect to the procurement of road construction projects. Id. at 557-559. The Court of Appeals also observed that it would require a considerable stretch of the imagination to conclude that the Congress intended the Buy Indian Act to apply to road construction projects." Id. at 560. In short, the Court of Appeals rejected the contention that the BIA had authority to preclude an overall competitive bidding procedure.

The United States Supreme Court discussed the legislative history of the Buy Indian Act, 35 Stat. 71 as amended, 25 U.S.C. § 47. The Act directs the Secretary of the Interior to employ Indian labor "so far as may be practicable" and permits him to purchase "the products of Indian industry in open market." Andus v. Glover Construction Co., 446 U.S. 608, 613 (1980). The Court noted that the Buy Indian Act was enacted in 1910 as part of legislation that brought the purchase of Indian supplies under the province of § 3709 of the Revised Statutes.

> In 1910, § 3709 of the Revised Statutes provided in pertinent part: "All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency, the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals."

The Buy Indian Act was signed into law on June 25, 1910. The Act was Section 23 of an Act which concerned Indian decedent estates who had been allotted land. The intent of the Buy Indian Act was clear that any purchases by the Department of the Interior were exempt from the requirement of advertising for bids imposed

by § 3709 of the Revised Statutes. Section 23 of the Act of June 25, 1910 states in pertinent part:

> "That hereafter the purchase of Indian supplies shall be made in conformity with the requirements of section thirty-seven hundred and nine of the Revised Statutes of the United States: Provided. That so far as may be practicable Indian labor shall be employed, and purchases of the products of Indian industry may be made in open market in the discretion of the Secretary of the Interior. All Acts and parts of Acts in conflict with the provisions of this section are hereby repealed."

Congressional intent is quite clear that purchase of products of Indian industry "were to be exempt from the advertising strictures imposed by § 3709 of the Revised Statutes, by language in the last sentence. If Congress did not intend to exempt the Secretary of the Interior from the provision of Section 3709 of the Revised Statutes, then they would not have inserted the last sentence found at 36 Stat. 861 which provides that "All acts and parts of the Acts in conflict with the provisions of this section are hereby repealed." Act of June 25, 1910, Ch. 431, § 23, 36 Stat. 861 (1910).

Secondly, Congress in 1910 was responding to previous Congressional authority concerning purchases by the Department of the Interior of "the products of Indian industry" and subsequent exemption from § 3709 of the Revised Statutes. In a series of Appropriations Acts respecting the Indian Department of the Department of the Interior a similar provision to the Buy Indian

Act can be found since 1886. Each annual Appropriation act contained language indicating Congressional intent to exempt purchases of products of Indian industry from the strictures of any other acts.

Additionally, the legislative history of the 1910 Act indicates the intent of Congress that the BIA contract for supplies and services for the benefit of Indians without advertising. The House Report explained that "with the exceptions noted in the provision, "i.e., the Buy Indian Act, § 23" will bring the Indian Service, like all other branches of the public service, under the provisions of Section 3709 of the Revised Statutes. H.R. Rep. No. 1135, 61st Congress, 2d Session 12 (1910). Representative Burke made the same statement before Congress before the Act was passed. 42 Cong. Rec. 6097 (1910).

The Buy Indian Act was split into two parts for codification. The language that required the BIA to adhere to the advertising rules contained in § 3709 of the Revised Statutes was placed in 25 U.S.C. § 93. The provision concerning purchase of Indian goods was located in 25 U.S.C. § 47. In 1940, 25 U.S.C. § 93 was repealed. The Government was to procure through advertising for bids unless excepted by § 3709 or "otherwise provided" by laws such as the Buy Indian Act until 1965. Andrus v. Glover Construction Co., 446 U.S. 608, 614 (1980).

The law affecting BIA procurement was substantially modified in 1965 when the requirements of Title III of the FPASA was extended to cover the purchasing procedures of the BIA and most other executive agencies, 41 U.S.C. § 252 (a); 40 U.S.C. §§ 472(a), 474 (1965). Title III of the FPASA has a broad mandate that "all purchases and contracts for property and services shall be made by advertising." 41 U.S.C. § 252(c). The directive, however, specifically exempts negotiated procurements that are "authorized by law." 41 U.S.C. § 252 (e)(15). The Buy Indian Act is clearly a "law". Also 41 U.S.C. § 260 expressly states: "Any provision of law which authorizes an executive agency to procure any property or services without advertising or without regard to the advertising requirements of this title."

Thus, strong arguments can be made that the Buy Indian Act allows the Secretary of the Interior to enter into negotiated contracts for the purchase of Indian supplies and/or services, without the strictures of Section 3709 of the Revised Statutes. Unfortunately, the Court in Andrus v. Glover Construction Co., 446 U.S. 608 91980) held otherwise. The decision can be construed quite narrowly to embrace only road construction and leave the Secretary of the Interior free to enter into contracts with Indian-owned companies without first advertising for other types of construction.

The United States Supreme Court specifically held that the Buy Indian Act's language could not be construed to embrace road construction contracts. Andrus v. Glover Construction Co., 446 U.S. 608 (1980). It should also be noted that the Surface Transportation Act does allow for 100 percent Indian owned and controlled companies to procure through negotiated contracts. Pub. L. 97-424, 96 Stat. 2097.

Turning now to the proposed language to reduce the requirement that Indian economic enterprises that are 51 percent Indian owned and controlled to reap the benefit of Indian preference in negotiated contracts. This language appears to allow any business claiming 51 percent Indian ownership and control would be granted preference. We strongly oppose this language. Three reasons exist for our opposition. First, the possibility of "sham" and "front" companies would increase with the potential of edging out of competition legitimately owned and controlled Indian companies. The effort to reduce this risk or police the companies would be very time consuming and expensive indicating an impossibility to effectively police the activities of all companies claiming 51 percent Indian ownership and control.

Second, according to the 1986 national roster of certified Indian/Alaska Native Economic Enterprises,

over five hundred (500) Indian businesses have been certified as 100 percent Indian owned and controlled economic enterprises available under the Buy Indian Act. Indian businesses are still being certified at a very fast rate. Thirdly, the legislative history and origins of the Buy Indian Act clearly mandates the utilization of Indian labor. A 51 percent Indian owned and controlled economic enterprise cannot be said to be "Indian labor." Clearly, there may be Indian participation, but it would take a stretch of the imagination to consider this type of enterprise Indian labor.

Prior to summing up our position, a point should be made concerning the Small Business Administrations 8(a) program in which an entity of 51 percent Indian or minority ownership would also fall under the proposed language found in the "Buy Indian" amendments. Since the legislative history of the "Buy Indian Act" speaks of employing Indian labor, all "Buy Indian" projects should be excluded from 8(a) involvement since many non-Indians would then be eligible for participation in projects, services, products and contracts concerning Indians. The intent behind the "Buy Indian Act" was to employ Indian labor, not business enterprises even if they happen to be 51 percent Indian owned and controlled due to risk that non-Indian involvement will be pervasive.

The authority of the "Buy Indian Act" arguably precludes the need for 8(a) involvement on projects or contracts concerning Indians since the Act is a restricted procurement mandate.

In summary, the burderns and impossibility of avoiding a growth of front and sham companies makes the passage of the proposed language impracticable. Also, the histor_' and origins of the Buy Indian Act clearly mandates the use of Indian labor, not Indian participation in purchases of Indian product, services and activities related to Indian industry. A 51 percent Indian owned and controlled business is not "Indian" labor within contemplation of the language in the Buy Indian Act.

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100% Indian Owned

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(701) 772-1979
1817 1st Avenue North
Grand Forks, ND 58201

BOX 534 (701) 477-6009
BELCOURT, ND 58316

May 12, 1987

Honorable Senator Inouye
Chairman of the Senate Select Committee on Indian Affairs
838 Hart Building
Washington, D.C. 20510

Re: Proposed "Buy Indian" Amendments

Honorable Senator Inouye:

We respectfully submit for your review the enclosed letter brief explaining our position on the proposed "Buy Indian" amendments. Our opposition is limited to the language encompassed in the passage which concerns modifying the percentage required to be certified as an Indian economic enterprise. At the present time, the required percentage of ownership and control is 100% and we understand that the proposed amendments would reduce the amount to only 51% Indian ownership and control. We are a 100% Indian owned and controlled economic enterprise, certified by the Bureau of Indian Affairs, pursuant to the Buy Indian Act, 25 U.S.C. 47. As a certified Indian enterprise, we are taking the position of opposing the proposed "Buy Indian" amendments.

We understand that the proposed amendments are in the rough drafting stage but believe it behooves us to begin submitting a position document at this time. We respectfully request consideration of our position in drafting any language concerning the proposed amendments. We also respectfully request that we be informed of the next stage the proposed amendments will be taking, we would be very much interested in submitting a future brief or attending any hearings.

If you would like to contact us directly, please call 701-746-1058 or write 1817 1st Avenue North, Grand Forks, North Dakota. Thank you for your attention in this matter.

Sincerely;

Myra deMontigny

Myra deMontigny
Enc.